House of Commons

Committee of Privileges

Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records

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

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Summary

Parliament has historic powers to punish Members and non-Members for contempt. A "contempt of Parliament" is a relatively rare occurrence, but in recent years it has become a more prominent issue, especially in the context of select committees, which have, for instance, sometimes been unable to compel the attendance of witnesses or secure provision of papers.

On 27 October 2016, our predecessor Committee was asked to consider the matter of "the exercise and enforcement of the powers of the House in relation to select committees and contempts". Following interruptions including two general elections, the Committee resumed the inquiry in June 2020. We have sought to determine what the best options available to the House are in relation to contempts committed before select committees. Specifically, we have focussed on the issue of witnesses who refuse to appear before select committees or to provide evidence.

We have considered the arguments for and against three main options: to do nothing; to reassert the House's historic powers, including to fine and imprison; or to legislate to provide new powers. We have examined equivalent arrangements in other legislatures. We have also considered the related issue of fair treatment of witnesses and whether the practices of the House comply with modern standards of fairness and due process.

We have concluded that:

- Select committees play a vital role in our parliamentary democracy. It is essential that they have the powers necessary to function effectively, and to uphold the reputation, dignity and authority of Parliament.
- Of the three options set out above, we consider the best option is for new legislation to provide a statutory basis for existing select committee powers to summon witnesses and compel attendance and provision of information. New legislation would provide much needed clarity, effective deterrents for non-compliance and would bring our Parliament into line with many comparable legislatures.
- The House should clarify and reassert its commitment to fair treatment of witnesses to ensure that the practices of select committees comply with modern standards of fairness and natural justice.

This report evaluates several different models for legislation. We set out in detail our preferred option in the form of a draft Bill that would make failure to comply with a summons issued by a select committee a criminal offence, with the person concerned liable to a fine or imprisonment. We also propose that, in the interim before the passage of legislation, the House should proceed by way of resolution and standing order changes to set up improved processes for ensuring the fair treatment of witnesses.

We now wish to hold a public consultation on our preferred option. We have set out questions that will inform the next stage of our inquiry. Following the close of the consultation period, we plan to take further oral evidence before presenting our final conclusions and recommendations to the House.

Introduction and background

Select committees and contempts

1. Parliament has powers and privileges which enable it to discharge its responsibilities, and without which it could not function. These include historic powers to punish Members and non-Members for contempt of Parliament. The precise nature of these powers, and the range of sanctions available to both Houses, have evolved over time, as has the context in which they can be exercised.

2. Both Houses routinely delegate powers to select committees, including powers to send for "persons, papers and records" (sometimes referred to as "PPR powers"). These powers, subject to some limitations, allow committees to require named witnesses (although not Members of either House) to attend in person to give oral evidence and to require that specified papers be provided to them. If a person refuses to give evidence or provide requested material, they could ultimately face sanction. Historically, the sanctions available to Parliament have included admonishment (at the bar of the House or by resolution), fines and imprisonment.

3. Most select committees obtain the information they need through voluntary agreement, and without direct recourse to these powers and sanctions. However, the sanctions are intended to ensure that, as a last resort, committees can compel individuals to provide them with the information they need. If an individual fails to comply with an order made under PPR powers then the Committee can raise the matter within the respective House, which will in turn determine whether the individual has committed a contempt and what sanction, if any, to impose.

4. Parliament's powers form part of its rights and immunities that are commonly referred to as "parliamentary privilege". Parliamentary privilege is defined in Erskine May as the

> the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.[1]

Parliamentary privilege exists to "allow Members of each House to contribute effectively to the discharge of the functions of their House".[2] It also exists for the "protection of Members and the vindication of [Parliament's] own authority and dignity".[3]

5. Contempt of Parliament is not defined in statute but is defined in Erskine May as any actions which "obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers".[4] Examples of contempt in the context of a select

1 For definition of Parliamentary Privilege see Erskine May Parliamentary Practice, 25th edition (London, 2019), pp 239–241, para 12.1
2 Erskine May, 25th edition (London, 2019), pp 239–241, para 12.1
3 Erskine May, 25th edition (London, 2019), pp 239–241, para 12.1
4 Erskine May, 25th edition (London, 2019), pp 239–241, para 12.1

committee might include refusing to comply with an order of either House to attend one of its committees, lying to a select committee in evidence, leaking of a draft committee report or any other form of obstructing a Member from conducting their business.[5]

6. The enforceability of the penal powers of Parliament was considered by Joint Committees of both Houses in 1999 and 2013. The 1999 Joint Committee on Parliamentary Privilege (the "1999 Committee") explained that:

> Parliament's disciplinary and penal powers are part of the control exercised by Parliament over parliamentary affairs. Conduct, whether of a member or non-member, which improperly interferes with the performance by either House of its functions, or the performance by members or officers of their duties, is a contempt of Parliament.[6]

The 2013 Joint Committee on Parliamentary Privilege (the "2013 Committee") commented:

> While committees have powers to call for evidence and summon witnesses delegated to them, the power to punish contempts remains a matter for each House as a whole. The expansion of the work of select committees since the 1970s means questions are most likely to arise in the context of select committees and their witnesses, but these powers cannot be considered apart from the powers each House possesses to deal with contempt.[7]

The two joint committees reached different conclusions regarding the best solution to address the issue of enforcing select committee powers. The 1999 Committee supported legislation, while the 2013 Committee preferred the option of reasserting select committees' powers by resolution and standing orders. The findings of both committees are examined in detail later in this report.

Referral of 27 October 2016

7. On 27 October 2016 the House passed a Resolution that the matter of "the exercise and enforcement of the powers of the House in relation to select committees and contempts" be referred to the Committee of Privileges.[8]

8. The immediate circumstance that led to the passing of this resolution was the publication of our predecessor Committee's report, *Conduct of witnesses before a select committee*, which considered allegations that Mr Colin Myler, Mr Tom Crone, Mr Les Hinton and News International misled the Culture, Media and Sport (CMS) Committee during successive inquiries into privacy and phone hacking.[9] The Committee found

5 There is no set list of actions that might be regarded as contempts. However, the 2013 Joint Committee on Parliamentary Privilege appended to its report a list of "actions which may be treated as contempts". Although the draft resolutions which included this list of actions were never adopted by either House, as noted in the Committee's Report on the Conduct of Mr Dominic Cummings, the actions listed can be taken to reflect the current procedural position (Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, para 17).

6 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, Executive summary

7 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 48

8 See Votes and Proceedings, 27 October 2016. The Committee of Privileges exists to consider specific matters relating to parliamentary privilege, including alleged contempts, referred to it by the House. It is unlike other select committees in that it does not have the power to initiate its own inquiries into matters within its remit.

9 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662

two instances of contempt, concluding that Mr Tom Crone and Mr Colin Myler misled the CMS Committee by answering questions falsely about their knowledge of evidence that other News of the World employees had been involved in phone hacking and other wrong-doing.[10] The House, on the basis of the Committee's recommendations, resolved to admonish the two witnesses.[11]

9. The Committee's inquiry at that time highlighted questions relating to how the House deals with allegations of contempt of Parliament, including the imposition of sanctions. The Committee stated:

> While we are satisfied that the processes we have followed in this case have been fair and robust, we believe that the House's procedures for enforcing the exercise of the powers of select committees and for investigating, adjudicating on and imposing sanctions in relation to allegations of contempt should be put beyond doubt and publicly stated […] This includes how the House may impose its will on reluctant witnesses as well as how to exercise its powers over those who are alleged to have given false or misleading evidence to a committee. It is time that that this work was taken forward."[12]

10. The referral of 27 October 2016 also sits within a broader context of concerns about the powers available to Parliament, and in particular select committees.[13] Although the vast majority of select committees are able to gather evidence without needing to resort to coercive powers, the issue of recalcitrant witnesses has become an increasing problem for the House, with a notable increase in the number of summonses in recent times (see Annex 1 for a list of recent summonses).[14] Concurrently, there have been an increasing number of questions asked about the enforceability of the Houses' powers in relation to non-Members.[15]

11. The Houses' inherent powers to punish non-Members for contempt by fine or imprisonment are untested in recent times; the House of Commons last imposed a fine in 1666, last used its power to imprison in 1880, and last summoned a non-Member to the Bar of the House in 1957 (see Annex 2 for background on the historic use of sanctions). Various select committees - notably in 1967, 1977, 1999 and 2013 - have touched upon the need to review and bring clarity to the exercise of Parliament's penal powers.[16] In

10 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 329

11 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 336; see Votes and Proceedings, 27 October 2016.

12 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 327–328

13 See HC Deb, 27 October 2016, col 444 [Commons Chamber]

14 Q2 [Dr John Benger]

15 For an overview of the issues concerning the enforceability of the Houses' powers in relation to non-Members see Richard Gordon QC and Amy Street, "Select Committees and Coercive Powers - Clarity or Confusion?", Constitution Society (London, 2012)

16 Select Committee on Parliamentary Privilege, First Report of Session 1966–1967, HC 34 [Report accessible via ProQuest UK Parliamentary Papers]; Committee of Privileges, Third Report of Session 1976–77, HC 417 [Report accessible via ProQuest UK Parliamentary Papers]; Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I; Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100

2012 the Liaison Committee noted the "long-standing uncertainties about the extent and enforceability of select committees' powers", after being told by the then Clerk of the House as part of its inquiry into select committee effectiveness that

> Recent events have shown to a wider audience what all insiders always knew; that there were considerable doubts about whether the House could really impose its will on those whom a committee wished to summon, or punish those who gave (unsworn) false or misleading evidence to a committee.[17]

12. By the time of the referral in 2016, Parliament's powers to fine or imprison had been regarded as "theoretical" both by the Government in its 2012 Green Paper on Parliamentary Privilege and in constitutional case law.[18] There had been recent high-profile cases where witnesses had publicly refused to co-operate with select committee inquiries, including the joint inquiry by the Work and Pensions and Business, Innovation and Skills Committees into the collapse of BHS, and the Business, Innovation and Skills Committee inquiry into working practices at Sports Direct. The lack of certainty had also encouraged lawyers acting on behalf of their clients to challenge the exercise of powers; our predecessor Committee's report into the *Conduct of witnesses before a select committee* cited several submissions from lawyers acting on behalf of the News of the World journalists, who raised certain procedural and legal objections.[19] For example, the law firm Morrison Foerster stated:

> we do not accept that the House of Commons possesses any kind of penal jurisdiction which entitles it to find individuals guilty of criminal offences and to mete out punishment to them whether by way of a sentence of imprisonment, a fine or merely an admonishment.[20]

13. It is set out in Erskine May that the House possesses penal jurisdiction over contempt, and this has most prominently been reasserted in recent years by the 1999 and 2013 Committees. However, since at least 2016 it has been widely accepted that the House's only practicable sanction for a non-Member found guilty of a contempt, no matter how severe, was admonishment by resolution. That position remains the case today.

14. During the debate on the referral to the Committee of Privileges on 27 October 2016, the then Leader of the House, the Rt Hon David Lidington, speaking for the Government, stated that it was "troubling" that questions were being raised by third parties regarding the use of Parliament's powers and the proper jurisdiction of the House.[21] In the debate, the then Leader of the House added that the Committee's findings and recommendations mattered because:

> Select Committees play an important role in parliamentary and national political life. Ultimately it is voters who lose out when witnesses fail to provide reliable evidence. Decisions that shape and affect our constituents'

17 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 13

18 HM Government, Parliamentary Privilege, Cm 8318, April 2012, para 252; See R v Chaytor and others (Appellants) [2010], para 61

19 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 41

20 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 41; law firm Simmons & Simmons put forward similar objections.

21 HC Deb, 27 October 2016, col 444 [Commons Chamber]

> lives are made by the businesses, organisations, and of course Ministers whose work is overseen by Select Committees. Scrutiny happens effectively only because of the powers and privileges afforded to Members of Parliament. Without them, the ability of MPs to serve their constituents properly is undermined.[22]

15. The then Leader of the House, agreeing with the recommendations of the Privileges Committee, advised the House that the right way to proceed was to ask the Committee to examine carefully the questions of the exercise of penal powers and then to

> come back with a report and, if the Committee thinks appropriate, recommendations to the House, so that we could take a decision at that point, after serious examination of our traditions and practices, of the law in this country, including human rights law, and of the practice of other democratic jurisdictions.[23]

Timeline of our inquiry since October 2016

16. Our inquiry has been a protracted one, for several reasons including interruption by two general elections, an extended period of suspension while the Committee in the last Parliament awaited the views of the Liaison Committee, the Committee's decision to prioritise another matter referred to it by the House relevant to the wider inquiry (the alleged contempt by Mr Dominic Cummings) and difficulties caused by the Coronavirus pandemic.

17. In January 2017, following initial informal briefings, the Committee published a memorandum on powers and select committees from the then Clerk of the House Sir David Natzler.[24] The paper broadly set out three options: (a) to do nothing; (b) to assert the House's powers by resolution or in Standing Orders; or (c) to legislate. The Committee published the paper from the Clerk as the basis of a call for evidence. The Committee also sought evidence from individuals and organisations with a specific interest or experience in this matter, namely select committee chairs, the Leader of the House, Members of the House of Lords, serving and former members of the judiciary and constitutional experts. The Committee received 12 submissions before the 2017 dissolution.[25]

18. Our predecessor Committee agreed to resume its inquiry after the 2017 general election. It decided in the first instance to seek the views of select committee chairs through a request for a memorandum to the Liaison Committee. Following extended discussions in the Liaison Committee, its then Chair (Dr Sarah Wollaston MP) wrote to our predecessor Committee in June 2018 to report that:

> There is not a consensus in the Liaison Committee on which of these two routes (statutory or non-statutory) is the right one to follow, although there is probably a majority in favour of the former (and it is the solution I personally support). While there is some scepticism within the Committee

22 HC Deb, 27 October 2016, col 444 [Commons Chamber]
23 HC Deb, 27 October 2016, col 447 [Commons Chamber]
24 Clerk of the House [Sir David Natzler] (SCC0001)
25 Committee of Privileges, Publications (SCC0001-SCC0012) [last accessed April 2021]

> about the effectiveness of a non-statutory solution there are also significant anxieties about the risks of involving the courts in the proceedings of the House.

19. Shortly after, on 28 June 2018, the House referred another matter to the Committee of Privileges - the alleged contempt of Mr Dominic Cummings. The alleged contempt related to Mr Cummings' failure to obey an Order of the House that he should attend a meeting of the Digital, Culture, Media and Sport (DCMS) Committee as part of its inquiry into "Fake News". Our predecessor Committee, following a precedent set during the News International case, agreed that "should the Committee find any allegations arising from the matter of privilege referred to it on 28 June 2018 to be proved, the maximum penalty it will recommend the House to impose is admonishment".[26]

20. The present inquiry was suspended for the duration of the Cummings case. The Committee reported on that case in March 2019, concluding that Mr Cummings' actions did amount to contempt and that the House should admonish Mr Cummings by way of resolution of the House.[27] This was subsequently done. The Committee noted that "the case of Mr Cummings has raised further questions as to the enforceability of the House's powers and those of its committees to secure evidence".[28]

21. In July 2019, our predecessor Committee resumed the present inquiry. It published further written evidence, and held two oral evidence sessions. It had planned to take further oral evidence but was interrupted by the 2019 general election.

22. In September 2019 the Liaison Committee published a report on *The effectiveness and influence of the select committee system*.[29] This summarised the Liaison Committee's involvement with our inquiry, and concluded:

> Events since the letter from the Chair of this Committee was submitted to the Committee of Privileges in June 2018 have only served to further convince us that the option of doing nothing is unacceptable. What enthusiasm there was for implementing the recommendations of the 2013 Joint Committee on Privileges' middle way of an "assertion" of the House's penal powers seems if anything to be waning, and it may be that the Privileges Committee will be forced to choose between recommending that the House simply abjures its claim to the power to compel attendance and penal powers to punish contempts or finds a way to give them at least some element of statutory force.[30]

26 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, para, Annex: Resolution on process; Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, Appendix: Committee resolution on procedure

27 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, para 33

28 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, para 36

29 Liaison Committee, Fourth Report of Session 2017–19, The effectiveness and influence of the select committee system, HC 1860

30 Liaison Committee, Fourth Report of Session 2017–19, The effectiveness and influence of the select committee system, HC 1860, para 186

23. After further delays caused by the time taken to establish new committees after the General Election, and subsequently by the Coronavirus pandemic, we resumed this inquiry in the current Parliament in June 2020. We issued a press release at that time setting out the issues we planned to consider.[31]

24. We have since received further written evidence and have conducted comparative research into the practices of equivalent democratic legislatures. This has included consideration of over 50 responses to a questionnaire sent to other legislatures primarily through the ECPRD (European Centre for Parliamentary Research and Documentation) and CATS (Clerks-at-the-Table) networks. We also held private briefings with representatives from four legislatures - the US Congress, the Parliament of Australia, the New Zealand Parliament and the Houses of the Oireachtas. We have since published all evidence referred to in this report on our website.[32] We are grateful to all who have helped us with our inquiry.

25. **Since the initial referral of 27 October 2016 the issue of the exercise and enforcement of select committee powers has become, in the words of the Clerk of the House, "of greater relevance and urgency" given recent high profile cases of non-Members refusing to appear before select committees or submit evidence.**[33]

26. **Our intention is to put forward a credible set of proposals as soon as possible. This report contains our preliminary proposals, on which we will consult, and then take further oral evidence before presenting a final report for agreement by the House.**

31 "New chair appointed and inquiry into select committees and contempts resumed", Committee of Privileges press release, 1 June 2020

32 Committee of Privileges, Publications [last accessed April 2021]

33 Clerk of the House [Dr John Benger] (SCC0016), para 2

1 Options for the Committee

The "three options"

27. For at least the last decade the debate over how best to address the perceived inability of the House to exercise its penal powers has been framed around three options:

a) To do nothing; or

b) To reassert the House's existing powers by amending Standing Orders or by Resolution; or

c) To legislate to provide a statutory regime, whether administered by Parliament or the courts.[34]

The options have also been considered by numerous committees, including successive Liaison Committees and two Joint Committees set up to review Parliamentary Privilege in 1999 and 2013. Despite both Joint Committees producing very similar diagnoses, each committee proposed a different cure.

28. The 1999 Committee recommended legislating to provide a statutory basis for Parliament's penal powers. The Committee noted that the investigatory work of select committees was an increasingly important sphere of operation where sanctions needed to be available.[35] It also presciently warned that:

> unless a residual power to punish exists, the obligation not to obstruct will be little more than a pious aspiration. The absence of a sanction will be cynically exploited by some persons from time to time.[36]

The 1999 Committee made a series of recommendations relating to sanctions, arguing that a power to fine non-Members should be introduced to bolster the House's existing power to admonish and that imprisonment should be abolished.[37] Although it argued that Parliament should retain its own penal jurisdiction "rather than find itself beholden to the courts", the Committee also argued that it was not practicable for Parliament "to provide, and be seen to provide, the procedural safeguards appropriate today when penalising persons who are not members of Parliament".[38] It therefore recommended that sanctions should be carried out by the High Court, "concurrently with Parliament".[39]

29. The 2013 Committee recommended instead that the House should seek to reassert its existing powers by means of resolution and Standing Orders. It rejected the option of doing nothing but argued that the disadvantages of legislating outweighed the advantages.[40] It noted:

34 Clerk of the House [Sir David Natzler] (SCC0001), para 2.1; See also written evidence submitted by the Clerk of the House [Sir Robert Rogers] to the Liaison Committee in 2012 as part of their inquiry into Select committee effectiveness, resources and powers.
35 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 301
36 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 302
37 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, paras 24–31
38 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 306
39 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 306
40 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 61, para 75

> It is unfortunate that Parliament's restraint has led to doubt about the continuing existence of its powers. They are part of United Kingdom law and have been so for centuries.[41]

It urged both Houses to "rise to the challenge" of asserting parliament's continuing jurisdiction over contempt.[42] It identified two impediments that either House might need to overcome to enforce its powers: first, institutional reluctance to act in a way which might seem oppressive; and second, the fear of successful legal challenge in the European Court of Human Rights.[43] It proposed a substantial set of changes to standing orders and by resolution to address these concerns, creating a clearer framework for the exercise of committee powers of summons that would ensure that such powers were exercised in a fair and consistent manner, in order to enhance their legitimacy.[44] While the suggested changes have had some influence on the way select committees conduct their business, they were never formally adopted in either House.

30. Our Committee's successive calls for evidence have continued to frame the debate based on the three options outlined above. The evidence we received varied in its assessment of what the most appropriate solution might be. We have therefore examined the arguments for and against each option and present our conclusions below.

Option (a): "Do nothing"

Arguments for

31. A primary argument for doing nothing is founded on the claim that the extent of the problem currently faced by select committees has been exaggerated. Although select committees were identified both by the 1999 Committee and the 2013 Committee as the most likely arena in which the House's powers are to be tested, evidence has been taken from thousands of witnesses over the years without any difficulty.[45] In 1978, the House resolved that its penal jurisdiction "should be exercised (a) as sparingly as possible" and "(b) only when the House is satisfied that to exercise it is essential in order to provide reasonable protection for the House, its Members or its officers, or is likely to cause substantial interference with the performance of their respective functions".[46] Since then the House has only exercised its powers on a small number of occasions, and in the majority of these instances individuals and organisations have complied with requests. Given the relative rarity of the formal use of committee powers, and the even greater rarity of actual contempts, taking radical action on this could therefore be regarded as using a "sledgehammer to crack a nut".[47]

41 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 76
42 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 77
43 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 50
44 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, annexes 2 and 3
45 Clerk of the House [Sir David Natzler] (SCC0001) para 2.2
46 CJ (234) 170, 6 Feb 1978
47 Q7 [Dr John Benger]

32. Another argument put forward for doing nothing is to advocate that the threat of admonishment is still a severe one. In the debate on the referral of 27 October 2016, the then-Leader of the House, Rt Hon David Lidington MP argued:

> Refusing to attend select committees as a witness or otherwise committing a contempt of Parliament itself causes reputational damage for the perpetrator. We should not underestimate that impact. Being designated as having committed a contempt of Parliament or having even been described as not a "fit and proper" person to hold a particular office or exercise a particular function can cause reputational damage to the individual and can cause commercial damage to the organisations they represent.

A similar argument was put forward by Lord McFall of Alcluith, Senior Deputy Speaker, House of Lords, who suggested that in the House of Lords the threat of "naming and shaming" a non-cooperative witness has tended to be enough to ensure attendance.[48] Committees in both Houses currently have the power to make detailed findings of any behaviours amounting to contempt of Parliament, and to publish these in reports that cannot be challenged or questioned by the courts owing to the protections afforded by Article IX of the Bill of Rights 1689.[49]

33. The power of "naming and shaming" has been acknowledged by chairs of select committees and led one chair in the previous Parliament to suggest to us that the current arrangements are adequate. Frank Field, Chair of the Work and Pensions Committee in the last Parliament, noted how in its joint inquiry with the Business, Innovation and Skills Committee into the collapse of British Home Stores (BHS) the committees were confident in asserting their expectations of cooperation from those involved, based on the reputational damage caused by not attending.[50] Frank Field (now Lord Field) told us that the high-profile witnesses identified by the committees, including Sir Philip Green, Dominic Chappell, Lord Grabiner and senior executives of Goldman Sachs all attended, in spite of repeated prior assertions that they would not, and without the committee needing to issue any formal summonses.[51] Frank Field concluded that "it is not apparent that any select committee has failed to carry out its work because witnesses refused to appear".[52] He also expressed concern that any "apparent extension of powers could paradoxically weaken select committees by making a political process more legalistic."[53]

34. Further arguments for doing nothing include concerns that any recalibration of committee powers might add unnecessary bureaucracy and legalistic process and hinder the effective working arrangements of committees; and concerns that statutory options risk eroding the exclusive cognisance of Parliament. We revisit these arguments later in the consideration of the arguments for and against a statutory solution.

48 Lord McFall of Alcluith (SCC0006), page 2
49 Nigel Pleming QC (SCC0005), para 22
50 Frank Field (SCC0007), para 3
51 Frank Field (SCC0007), paras 4–10
52 Frank Field (SCC0007), para 16
53 Frank Field (SCC0007), para 1

Arguments against

35. It is in the public interest to ensure that select committees have the powers they need to function effectively and to uphold the reputation, dignity and authority of the House. Select committees play an essential part in our parliamentary democracy holding the powerful to account. They are at the forefront of facilitating effective scrutiny and debate, opening the House up to and involving the public, and securing Parliament's future as the "grand inquest of the nation".[54]

36. We are conscious that doing nothing would leave unaddressed the concerns raised by the Liaison Committees in 2012 and 2019, the Joint Committee in 2013, and the Committee of Privileges in 2016 and in 2019 about the effectiveness of select committee powers. The 2013 Committee noted that:

> While Committees have been able to function effectively up until now, the growing, and increasing public, doubt over each House's penal powers means that there is a real risk that potential witnesses will be tempted to test those powers. The two Houses must be prepared for that eventuality. It will be too late to consider these matters when a crisis arrives.[55]

The 2013 Committee accordingly rejected the option of doing nothing.[56] Apart from the exceptions cited above, this has also been the majority view in the evidence submitted to our Committee. In a letter submitted in 2018 the Liaison Committee acknowledged that although there were differences of opinion as to the best way forward, there was clear agreement across the Committee that "the situation cannot be allowed to remain as it is".[57]

37. There is also evidence to suggest that the issue of recalcitrant witnesses is becoming an increasing problem for committees, and by extension the House. Between 1992 and 2007, only one summons was issued, however since 2007 there have been 13 summonses (see Annex 1).[58] It is likely that this is in part due to the increasing prominence select committees play in public life.[59] Nigel Pleming QC stated that the greater activism and increased media coverage of select committees has led more witnesses to challenge the authority of select committees by refusing (temporarily or permanently) to appear before them, with notable examples being Rupert Murdoch, Mike Ashley and Sir Philip Green.[60] The Clerk of the House has also suggested that the "nature of the reluctance has changed" moving from general "confusion" into "open defiance" with the case of Mr Cummings.[61] In 2019 the Liaison Committee concluded in its report into *the effectiveness and influence of the select committee system* that

> Events since the letter from the Chair of this Committee was submitted to the Committee of Privileges in June 2018 have only served to further convince us that the option of doing nothing is unacceptable.[62]

54 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 58
55 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 61
56 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 61
57 Dr Sarah Wollaston (SCC0015), p. 2
58 See Annex 2; see also Q2 [Dr John Benger]
59 Nigel Pleming QC (SCC0005), para 18
60 Nigel Pleming QC (SCC0005), para 19
61 Q2 [Dr John Benger]
62 Liaison Committee, Fourth Report of Session 2017–19, The effectiveness and influence of the select committee system, HC 1860, para 186

38. This conclusion has been further supported by submissions from current select committee chairs; all of the submissions we received from them suggested that at least some action needed to be taken, several suggesting that the current powers to summon witnesses were "inadequate and lack teeth".[63] Huw Merriman, Chair of the Transport Committee, raised concerns that the high profile failure by Mr Cummings to appear before the DCMS Committee in the last Parliament "may embolden more witnesses to ignore invitations or formal orders by select committees to give evidence".[64] He noted that in the current Parliament his committee had already had a company refuse to give oral evidence, despite multiple requests and proposed dates. The committee chose not to pursue the matter further either formally or informally knowing that there was no guarantee that the company would attend; the Chair submitted that "we ultimately felt powerless in this situation".[65]

39. Such concerns rebut the view that the issue of recalcitrance has not prevented committees from carrying out their work. Lord Tyrie, former Chair of the Liaison Committee and Treasury Committee, listed examples from across the last twenty years, to suggest that at the moment when powers of compulsion were most needed "they have often been found to be wanting"; examples listed included investigations by the Defence and Foreign Affairs Committees into the Iraq War and the Culture, Media and Sports Committee's inquiry into Press Standards, Privacy and Libel.[66] He told us:

> If we arrive at the point where appearance is voluntary, and denial of papers can be fought out endlessly in exchanges with lawyers, I think that Parliament and its position as a representative of the people that is there to obtain consent will be sharply diminished. We just cannot reduce all this to an appearance of the fearful and the willing […][67]

The Clerk of the House stated that "there have been a number of other cases in which Committees have struggled to secure the attendance of potential witnesses", noting the recent example of Mr Jeremy Kyle declining an invitation to appear before the Digital, Culture, Media and Sport Committee as part of its inquiry into reality TV.[68]

40. In response to the arguments outlined above regarding the severity of an admonishment from the House, it has also been argued that the threat of admonishment has become increasingly less effective as a deterrent for uncooperative, evasive or even insolent behaviour before a Committee. Paul Evans, a former Clerk of the Journals and Clerk of Committees, stated that the admonition of Mr Tom Crone and Mr Colin Myler in the News International case was "widely felt not to meet the crime" and noted that it was unlikely that "the guilty parties would have got off so lightly if the misleading statements

63 Huw Merriman MP, Chair of the Transport Committee (SCC0029), para 6; see also Rt Hon Philip Dunne, Chair of the Environmental Audit Committee (SCC0028); Tom Tugendhat MP, Chair of the Foreign Affairs Committee (SCC0026); Rt Hon Mel Stride, Chair of the Treasury Committee (SCC0027)

64 Huw Merriman MP, Chair of the Transport Committee (SCC0029), para 7

65 Huw Merriman MP, Chair of the Transport Committee (SCC0029), para 10

66 Lord Tyrie (SCC0020), page 2

67 Q64 [Lord Tyrie]

68 Clerk of the House [Dr John Benger] (SCC0016), para 8; "Jeremy Kyle declines to give evidence to DCMS Committee", Digital, Culture, Media and Sport Committee press release, 18 June 2019

had been made to a court".[69] Sir Malcolm Jack, a former Clerk of the House, has similarly argued that admonishment is no longer a punishment that "frightens people".[70] Lord Tyrie commented that

> the only practical consequence of refusing to comply with a Committee summons, or a call for papers, is reputational. And that cost will vary, depending on the individual concerned. For some, […] to be held in contempt may bring about the end of their careers. For others, particularly those whose anti-establishment credentials may be burnished by a finding of contempt, it may do the opposite.[71]

The argument that a finding of contempt of Parliament, and subsequent admonishment by the House, might damage someone's career or financial prospects has been cast into considerable question by the example of Mr Dominic Cummings.

41. Contrary to the view expressed by the then Leader of the House in 2016 that being designated as having committed a contempt of Parliament can cause reputational damage to the individual, there is no evidence that witnesses necessarily suffer any great harm from being so designated. It is not clear that anyone who has been recently admonished by the House has been prevented from continuing in their existing jobs, or taking up new posts. Most notably, Dominic Cummings became a senior adviser in Downing Street after having been found to have committed a contempt of Parliament. He was even afforded a Parliamentary pass. It seems that for some potential witnesses the question is what they can get away with.

42. A further argument against doing nothing is that, regardless of the enforcement of powers, the House should at least clarify the current arrangements for due process and fair treatment of witnesses;[72] in 2012 the Liaison Committee considered that "at the very least Parliament should set out a clear, realistic, statement of its powers".[73] That task is yet to be completed, and is becoming increasingly important given the intense media environment that select committees are operating in.

43. There is clearly a need for greater clarity about the language, process, and nature of a summons, which makes the option of doing nothing unattractive. The confusion has only seemed to increase in light of recent cases. Tom Hickman QC and Harry Balfour-Lynn recalled press reports in 2018 that the Serjeant at Arms was sent to the hotel of Mr Ted Kramer, founder of tech company Six4Three, demanding that he hand over a cache of confidential documents including communications between Facebook and Cambridge Analytica, that the DCMS Committee considered relevant to its inquiry into fake news.[74] The reports suggested that Mr Kramer was threatened with imprisonment if he did not comply.[75] Hickman and Balfour-Lynn stated that regardless of the facts of the case "it demonstrates how unsatisfactory it is for Parliament to have such vague and uncertain powers".[76] In their view, if Parliament tried to enforce its powers in such a case it faced

69 Paul Evans (SCC0023), para 28
70 Q64 [Sir Malcolm Jack]
71 Lord Tyrie (SCC0020), page 3
72 Q2 [Dr John Benger]
73 Liaison Committee, Second Report of Session 2012–13, Select committee effectiveness, resources and powers, HC 697, paragraph 134
74 Hickman and Balfour-Lynn (SCC0031), paras 19–22
75 "Facebook documents seized by MPs using rare Parliamentary mechanism", The Telegraph, 25 November 2018
76 Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), para 20

a "real risk that such a person could raise the matter in court and seek a ruling on what their obligations to a parliamentary committee are and what sanctions could be imposed upon them".[77]

44. The arguments presented to us have therefore made it clear that "doing nothing is not therefore in reality doing nothing".[78] We agree with Paul Evans that doing nothing would in practice be a "concession/confession" that the House's theoretical penal powers no longer exist and an endorsement of the present situation.[79]

45. **There have been significant developments in the exercise of select committee powers even since the referral of this matter to us on 27 October 2016. Recent cases–such as the refusal of Mr Dominic Cummings to appear before the DCMS Committee–have revealed the impotence of the House to enforce the powers it delegates to select committees.**

46. **The problem of recurring recalcitrance, or simply open disregard of a Committee summons, is no longer a hypothetical one. Individuals invited to give evidence know that they can treat committees with disdain, and by extension the House, without any fear of meaningful penalty. Their lawyers can advise them that the House effectively has no powers to enforce a summons. In many instances a potential witness may stall in response to a committee invitation in the hope that the Committee will move on. We acknowledge that examples of witnesses point-blank refusing to attend or provide information are rare. When this occurs, however, it can have serious consequences for the committee and its work, and for the reputation of the House.**

47. **We therefore reject the option of doing nothing and agree that the current uncertainty cannot be allowed to continue.**

Option (b): "Reassert the House's existing powers by amending Standing Orders or by Resolution"

Arguments for

48. It has been argued that it would be preferable for the House to reassert its existing powers by amending Standing Orders or passing Resolutions. The main argument put forward for reasserting the House's powers in this way is that new Standing Orders or Resolutions could also make the House's procedures and processes clearer and fairer to those subject to them. It is also an action that the House itself could take without the involvement of any external bodies such as the courts. The House could for example pass a resolution to affirm its continuing powers to punish contempts, to illustrate the types of actions or behaviours that would be likely to amount to contempt; and to confirm and clarify the House's resolution of 6 February 1978, regarding the instances when the House would exercise its powers.[80] This approach also would involve setting out by resolution or in standing orders new provisions for fair treatment of witnesses. By comparison to passing new legislation, assertion of this kind would be an easily achievable step.

77 Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), para 21
78 Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), para 22; see also Q7 [Mark Hutton]
79 Paul Evans (SCC0023), para 8
80 Clerk of the House [Sir David Natzler] (SCC0001), para 2.7

49. Providing greater clarification was part of the argument put forward by the 2013 Committee.[81] It rejected the option of doing nothing on the basis that "at the very least Parliament should set out a clear, and realistic, statement of its powers".[82] The 2013 Committee proposed a set of draft resolutions for the House setting out the actions which may be treated as contempts and setting out the House's approach to the exercise of its penal jurisdiction.[83] To ensure due process the 2013 Committee also proposed setting out in Standing Orders the procedures that committees and the House should follow in cases where the exercise of powers was contemplated, although it suggested that this would confirm arrangements that "in most cases, [were] already common practice".[84]

50. A separate strand of the 2013 Committee's case for reassertion was the argument that the House's penal powers, including to fine and imprison, still existed and simply needed to be exercised:

> As the Clerk of the House of Commons has said, the question is not whether the Houses' penal powers exist; it is whether they can be enforced. Desuetude is not a legal doctrine in England and Wales, and there is no need for statute to confirm what already exists. The power to fine (based on the power possessed by the United Kingdom House of Commons) has only recently been asserted and used in New Zealand. The mechanisms for committal by warrant from the Speaker to the governor of a prison have not been rescinded.[85]

The 2013 Committee's arguments for reassertion were based upon the disadvantages of legislation confirming Parliament's powers, most notably the reduction in exclusive cognisance.[86] It argued that the exercise of Parliament's penal jurisdiction was "fundamentally, a test of institutional confidence" that required the two Houses to be confident and certain in the assertion of their existing powers and the circumstances in which they would be prepared to use them.[87]

Arguments against

51. The primary argument against assertion by resolution or by changes to standing orders is that it fails to answer the question of whether the House's penal powers can be enforced in practice. Sir David Natzler's memorandum clarified that "assertion alone can neither add to the existing powers of the two houses nor require the compliance or co-operation of others".[88] Adding to the House's existing powers would require legislation. The current Clerk of the House has made the same point, adding that Parliament cannot and would not expect other agencies, whether the courts or the police, to act to enforce

81 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 76–85

82 Liaison Committee, Second Report of Session 2012–13, Select committee effectiveness, resources and powers, HC 697, paragraph 134

83 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, Annex 2

84 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 85

85 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 77

86 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100 paras 63–75

87 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 77; see also Clerk of the House [Sir David Natzler] (SCC0001), para 2.9

88 Clerk of the House [Sir David Natzler] (SCC0001), 2.11

its orders without explicit statutory authority.[89] Sir Malcolm Jack, a former Clerk of the House, noted that "while doing nothing will lead to nothing; proceeding by Standing Order or Resolution without power of enforcement, will similarly have no real effect".[90] Eve Samson, the current Clerk of the Journals who acted as a Commons Clerk for both the 1999 and 2013 Committees, has suggested that "assertion of powers could have worked in 2013, but is probably not politically or practically possible now, since the House has demonstrated its lack of certainty in the interim".[91]

52. Several legal arguments against assertion have also been presented.[92] Daniel Greenberg, Counsel for Domestic Legislation, Office of Speaker's Counsel, advised us that "to restore Parliament's powers to fine or imprison directly for contempt of Parliament is not a realistically achievable proposition", a primary reason being that it would "certainly be contrary to the European Convention on Human Rights (ECHR)".[93] He stated it would be regarded as a breach of natural justice for Parliament to "be seen to be the judge of its own cause against a citizen".[94] Some witnesses argued that it would be in breach of the UK's international obligations under the International Covenant on Civil and Political Rights (ICCPR).[95]

53. Others have challenged whether Parliament's powers to fine and imprison actually do continue to exist as "a matter of law".[96] Tom Hickman QC and Harry Balfour-Lynn argued:

> Since the powers were last used or considered by the courts, the tectonic plates of constitutional law have shifted and the principle of the separation of powers has become accepted. Furthermore, in the nineteenth century the courts of law established that, whether or not each House could be considered a court, the penal powers and privileges of Parliament were recognised because and to the extent that they were considered essential to the proper functioning of each House, as opposed to being merely desirable. Since the power to commit has not been used for well over a century and in the case of fines for many centuries—and in either case never in the context of the work of select committees—it cannot in our view be said that such powers are essential to the modern Parliament in the strict sense in which that term is used in the authorities.[97]

89 Clerk of the House [Dr John Benger] (SCC0016), para 6, para 23
90 Sir Malcolm Jack (SCC0002), para 12
91 Eve Samson (SCC0019), para 4
92 See for example Daniel Greenberg (SCC0021), Richard Gordon QC (SCC0003), Nigel Pleming QC (SCC0005), Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031)
93 Daniel Greenberg (SCC0021), paras 1–2; Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), paras 26–28
94 Daniel Greenberg (SCC0021), para 2, footnote 2
95 Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), para 5
96 For example, Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), paras 29–30
97 Hickman and Balfour-Lynn (SCC0031), para 5(1)

Nigel Pleming QC has similarly stated:

> Putting it in simple terms, if there is now no effective power to fine a person held to be in contempt, or imprison that person, asserting there is such a power by resolution will not create the power. It either exists in law, or it doesn't exist.[98]

54. Tom Hickman QC and Harry Balfour-Lynn have argued that asserting the Houses' powers would "simply add to the [current] uncertainty… and make it more likely that the courts would eventually be asked to rule on the question". An assertion by the House of its penal powers would therefore be a high risk strategy and almost certainly lead to a successful challenge in the courts, either domestically or in the European Court of Human Rights.[99] Such a challenge could risk undermining the "whole foundation of the House's contempt powers" and result in significant reputational damage to the select committee system and the House.[100]

55. **We agree that "assertion alone can neither add to the existing powers of the two houses nor require the compliance or co-operation of others". We consider that any attempt to exercise the House's historic powers to fine or imprison would contravene the Human Rights Act 1998 and the UK's international obligations under the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).**

56. **The 2013 Committee urged the two Houses to "rise to the challenge" of asserting the continuing existence of each House's jurisdiction over contempt, but they have failed to do so. Neither House has implemented the 2013 Committee's recommendations. There was an opportunity to take this course of action in 2013, but the case for doing so now is much weaker. The 2013 Committee argued that this was a matter of institutional confidence, but that confidence has recently been shaken by the cases of recalcitrance we described earlier. As developments since 2013 have demonstrated, practical assertion of the Houses' powers is now unlikely even to be considered, let alone implemented without significant reputational risk.**

57. **We conclude that reassertion of the House's historic powers to fine and imprison by resolution or in Standing Orders no longer offers a workable solution to the problems facing select committees. The risk is that it would be regarded as an empty gesture and only add to the present confusion.**

58. **We recognise, however, that there are aspects of this issue that the House can and should address by assertion, including updated commitments to fair treatment of witnesses and provision for due process in the exercise of its powers.**

98 Nigel Pleming QC (SCC0005), para 26

99 Nigel Pleming QC (SCC0005), para 3;

100 Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031), para 22; see also Lord McFall of Alcluith (SCC0006) on reputational risk to House of Lords

Option (c): "Legislate to provide a statutory regime"

Arguments for

59. The primary argument in favour of legislation is that only legislation can add to the powers of the House or ensure the compliance and co-operation of others. It is clear from the analysis above that if the House believes that witnesses should potentially face fines or imprisonment for contempt of Parliament then this will require new legislation.

60. Noting the weaknesses of the option of reassertion, Paul Evans argued that the choice before the House is "effectively a binary one". He concluded:

> [The House] can either abandon its claim to possess penal powers or legislate to make them a reality. There is no real middle ground which could provide a solid foundation on which to build.[101]

For much the same reasons as the arguments provided above against doing nothing, Members and former Members have argued that a legislative solution should be considered.[102]

61. The 1999 Committee recommended new legislation. It first considered whether contempt of Parliament by a non-member should still attract any punishment at all, and concluded that it should.[103] It stated that the "*power to punish anyone*" (original emphasis), whether a Member or not, for behaviour interfering substantially with the proper conduct of parliamentary businesses was a "principal privilege".[104] It argued that "powers must exist to ensure that committee investigations can proceed, that witnesses will attend and that papers will be produced".[105] It also argued that "to be effective as a last resort, the punishments themselves must be meaningful"; and accordingly recommended that alongside admonishment, there should be a power to fine non-members for a "grave contempt" (it recommended abolishing imprisonment on the grounds it had not been used for over a century).[106] It also noted that in each of the devolved parliamentary bodies, equivalent legislation had been passed making failure to attend proceedings or answer questions or to produce documents a criminal offence.[107]

62. The 1999 Committee also observed that passing legislation of this kind was not without precedent, even in the Westminster system. There is already statutory provision relating to two specific types of contempt. The Witnesses (Public Inquiries) Protection Act 1892 created an offence of threatening or punishing any person on account of evidence given by them to a committee of either House, unless that evidence was given in bad faith, and provided for damages to be payable in certain circumstances. The Parliamentary Witnesses Oaths Act 1871, superseded by the Perjury Act 1911, created an offence of perjury before the House or a committee. In the case of the latter this power was last invoked by the Public Accounts Committee in 2011.[108]

101 Paul Evans (SCC0023), para 10
102 See for example Huw Merriman MP (SCC0029); Sarah Wollaston (SCC0012)
103 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 301
104 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 14
105 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 301
106 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 303
107 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 301
108 See Daniel Greenberg (SCC0021), para 13

63. Those of our witnesses who supported a legislative option argued that this is the only option that could provide the desirable clarity for Members, witnesses and the general public; and the only option that would secure the powers to enable select committees to carry out their functions, including summoning relevant witnesses and accessing the necessary evidence to conduct their inquiries, safely in the knowledge that sanctions were available if needed.[109] In this sense powers provided in legislation could serve as a "weapon of last resort" - which even if they were never actually used would achieve the desired aim.[110]

Arguments against

64. The primary argument levelled against any legislative solution is that it would erode Parliament's "exclusive cognisance" (its control over its own affairs) and encroach upon protections afforded to its proceedings under Article IX of the Bill of Rights.[111] The 2013 Committee stated that permitting the courts to decide how Committees should act "in this area at least, would destroy the concept of "two constitutional sovereignties" and replace it with an asymmetric system in which the courts had power to evaluate Parliamentary proceedings"[112] It also raised several specific concerns with criminalising specific contempts, concluding that it would "entail a radical shift of power between Parliament and the courts".[113]

65. The first concern with a legislative solution is that it would necessarily give the courts a degree of jurisdiction–however small–over parliamentary proceedings. The Clerk of the House suggested that affording the courts any degree of jurisdiction might also turn out to be "the thin end of a wedge" in that a legitimate examination of proceedings in one context might encourage questioning of parliamentary proceedings in other contexts.[114] The concern over judicial evaluation of parliamentary proceedings is linked to a wider anxiety over potential "judicial activism" with regards to Article IX protections (namely that the courts may be willing to call into question parliamentary proceedings in other contexts). In particular, evidence to our inquiry expressed concern over any legislative solution that would result in the courts questioning why witnesses were called to give evidence and whether it was reasonable that they should be summoned.[115] Lord Tyrie suggested that this sort of judicial activism was a "serious risk".[116]

66. The former Lord Chief Justice of England and Wales, Lord Thomas of Cwymgiedd, submitted evidence addressing the possible involvement and role of the courts in relation to any statutory regime drawn up by Parliament. He stated:

> On reviewing the constitutional history of the interactions between Parliament and the courts on matters of privilege, it is clear that the principle of comity guides. In short, the settled position is that Parliament retains exclusive cognisance in relation to purely internal matters; however,

109 See Nigel Pleming QC (SCC0005); see also Professor Tom Hickman QC and Harry Balfour-Lynn (SCC0031)
110 Paul Evans (SCC0023), para 34
111 These concerns have been expressed in several submissions. See Sir Bernard Jenkin (annex of SCC0015); Lord Tyrie (SCC0020), page 8; Sir William Cash (SCC0010)
112 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 69
113 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 70
114 Clerk of the House [Dr John Benger] (SCC0016), para 24
115 Q67 [Lord Tyrie]; see also Eve Samson (SCC0019)
116 For contrasting views on the risk posed by judicial activism see Q67–68 (Lord Tyrie and Sir Malcolm Jack)

> where matters have an external quality, the courts may be called upon to adjudicate disputes and, as with any other statute, to determine the extent of the exclusion provided for in Article IX of the Bill of Rights… A Parliamentary Order for attendance or production against a non-Member is plainly an area with such an external quality. Therefore, whilst legislation might not be necessary, a statutory framework is much to be preferred to avoid any breach of comity.[117]

Although Lord Thomas noted in his conclusion that the issue "is one for Parliament to decide" he did suggest that a carefully drafted "two-stage approach", where the courts are used as a last resort, could provide a "constitutionally balanced solution".[118]

67. A second concern identified by the 2013 Committee is that any approach that criminalised specific contempts could increase doubt over how other contempts could or should be dealt with. Sir David Natzler explained:

> While categorising contempts would provide clarity in some cases, and enable specific offences to be prosecuted, it would be extremely difficult to define all those types of action or conduct which might obstruct, or appear to obstruct, the work of the House, its committees or members in their parliamentary duties. Actions which did not fall within the statutory definition of contempt could not be prosecuted by the courts; the House's own powers against the contemnor, if not effectively repealed by the passing of legislation, would remain at least as doubtful as they are now.[119]

68. A third concern is that it would introduce a bureaucratic process where one is not needed nor desired. A noted strength of the current select committee system is that it is flexible, adaptable and responsive.[120] Additionally, as both the 2013 Committee and our predecessor committee made clear, select committees operate in a political, not a judicial, sphere and therefore should not be required or expected to act as a court or tribunal might.[121] As the Clerk of the House has noted, were the courts to be given the power to evaluate the activities of a committee, they "might be obliged to satisfy themselves that the conduct of the committee in all its proceedings right up to the issue of the order had met the requirements of natural justice and human rights legislation".[122] Stringent requirements might also encourage the "aggressive" challenge from legal representatives "with a strong focus on procedural objections" which our predecessor committee experienced in the News International case.[123] The 2013 Committee concluded that legislation would "introduce delay… and remove the flexibility which is the chief advantage of the current system".[124]

117 Lord Thomas of Cwymgiedd (SCC0013), paras 5–6
118 Lord Thomas of Cwymgiedd (SCC0013), para 14
119 Clerk of the House [Sir David Natzler] (SCC0001), para 2.13; Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 66
120 For example, Dame Louise Ellman (SCC0004), para 5
121 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 31; Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 82
122 Clerk of the House [Dr John Benger] (SCC0016), para 24
123 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 25
124 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 70

69. The Clerk of the House summed up by saying that the question facing us is "whether the benefit of effective enforcement in those very few cases where a witness remains intractable outweigh the potential risks of subjecting some elements of parliamentary proceedings to inquiry and judgement by the courts".[125] He told us that his preference was for a legislative solution that criminalised the specific contempt of failure to comply with a summons.[126] He concluded that

> New statutory provision could provide a solution but will require detailed examination in order to establish a system which works for the House, committees, witnesses and the judiciary - not weakening the protections of Article IX while providing witnesses and third parties with checks and balances and protecting judicial independence and the rule of law. A limited intervention from the courts, focussed on enforcing orders after the House has certified a non-compliance might achieve this.[127]

70. **There is no straightforward solution to the difficulty the House has faced in exercising and enforcing select committee powers. If there were it would have been adopted years ago. All the options on offer carry potential benefits and risks.**

71. **While recognising the risks in a legislative solution, notably the potential erosion of exclusive cognisance and the danger of weakening the status of other privileges, we conclude that legislation is now the only option that can provide the House with the enforceable powers it needs to summon witnesses and order provision of papers. The inability effectively to penalise, and therefore deter, a failure to comply with a summons is preventing the effective discharge of select committee functions. Only legislation can put the powers of the House to punish this form of contempt beyond doubt and provide the necessary clarity to MPs, officials, witnesses, and the public.**

72. **As we set out elsewhere in this Report, we also propose that, in the interim before the passage of legislation, the House proceeds by way of resolution and standing order changes to set up improved processes for ensuring the fair treatment of witnesses. This task was recognised and started by the 2013 Committee and needs to be completed.**

125 Clerk of the House [Dr John Benger] (SCC0016), para 23
126 Q16 [John Benger]
127 Clerk of the House [Dr John Benger] (SCC0016), para 28

2 Legislative possibilities

Overview

73. There are several possible legislative options, ranging from criminalising specific contempts to a more comprehensive codification of parliamentary privilege. In considering these, we have followed the advice given to us by the Liaison Committee in the last Parliament:

> We believe the House should take action on the recommendations of the 2013 Joint Committee to test how usable and effective they might be. If they prove to be insufficient, that will give a firmer basis for pursuing the statutory solution… [In that instance] we would urge your Committee to initiate the process of drafting legislation relating to exercise and enforcement of these powers, so that it may be carefully and thoroughly considered in draft and consulted upon–not least with our colleagues in the other House of course. The range of statutory solutions would seem to run from a full dress Parliamentary Privileges Act to a limited provision engaging the criminal justice system solely in the enforcement of the order of a committee. We are aware that there are a number of international examples on which to draw.[128]

In this chapter we report some findings from our consideration of international examples and provide a summary of some particularly relevant models we have examined in greater depth (see Annex 3 for summary of some key international models). We then outline two UK-specific proposals, formulated in consultation with Speaker's Counsel, before detailing our proposal in Chapter 4.

International comparisons: key findings

74. In the current session, we have researched the arrangements and experience of other legislatures in enforcing committee powers. Our evidence is taken from a combination of questionnaire responses, private correspondence and informal private meetings.[129]

75. In conducting our research, we have also been conscious of the unique circumstances and treatment of parliamentary privilege in the Westminster model. Similarly, we have been conscious of the distinct features of our own select committee system, noting the advice of former Clerk of the Journals, Mark Hutton:

> There aren't very many Parliaments, if any, that I am aware of that have the sort of Select Committee structure that we have, where there is such a wide range of Committees broadly doing scrutiny work of that character, and working in such a flexible and varied way.[130]

128 Dr Sarah Wollaston (SCC0015), page 2
129 We have published all material referenced in this report on our website.
130 Q17 [Mark Hutton]

Powers

76. It is notable that of the over 50 comparator legislatures we have examined, a majority have at least some form of legislative basis for committee powers. Some parliaments have provided powers for specific committees established in their respective constitutions (for example, Germany and France), whereas others have legislated specifically in relation to parliamentary privilege, powers, and contempt (notably Australia and New Zealand). The US Congress stands out as a comparator, with several different types of contempt proceeding, including subpoena powers for congressional standing committees and impeachment.

77. The variation in enforcement powers reflects the varied way in which committees operate in different ways in different Parliaments.[131] In many legislatures, there is a distinction between committees of inquiry (or investigative committees) and standing committees set up on a permanent basis, which typically deal with legislation as well as scrutiny. In the majority of European legislatures, committees of inquiry tend not to be established in standing orders or equivalent, but are set up on an ad hoc basis and have quasi-judicial powers afforded to them under specific legislation (for example, the German Committee of Inquiry Act).[132] These powers are similar in form to powers afforded under the UK Inquiries Act.[133] However, the setting up of committees of inquiry in various European Parliaments requires a lower threshold than our UK Inquiries Act; for example, in Germany, the Bundestag has the right "and on the motion of one quarter of its Members the duty" to establish a committee of inquiry, as well as the right to determine the remit.[134] Comparatively, under the UK Inquiries Act 2005, only a Minister may initiate an inquiry under that act and choose the topic of inquiry.[135]

78. The Australian Parliamentary Privileges Act 1987 perhaps provides the most comprehensive attempt of a codification of privilege and specification of powers.[136] Richard Pye, Clerk of the Australian Senate, explained to us the historic context of the Act:

> the 1987 Act was prompted by court decisions which, in the view of the Australian Parliament, made unwarranted incursions upon parliamentary ground. The central task of the Act was to set privilege back to its understood foundation on Article IX.[137]

In relation to committee powers, the Act provides for a range of penalties for offences, including imprisonment and fines (section 7); measures for the protection of witnesses (section 12); and a definition of "proceedings in Parliament" (section 16) in relation to Article IX of the Bill of Rights 1688, which applies to the Australian Parliament and Commonwealth.[138] In the Australian model, both Houses have the power to impose penalties "for an offence against that House determined by that House to have been committed by that person"; in effect, the House acts as both judge and jury when it comes to determining the nature of the offence, and the appropriate sanction. The role of the court

131 Noting this, our questionnaire made reference to "investigative committees" rather than select committees, as select committees is a less well-known/used term.
132 German Bundestag EP reply (4450) (SCC0040); see also https://www.bundestag.de/en/committees/bodies/inquiry
133 Inquiries Act 2005
134 https://www.bundestag.de/en/committees/bodies/inquiry
135 Inquiries Act 2005, Section 1
136 Australian Parliamentary Privileges Act 1987
137 Richard Pye, Clerk of the Australian Senate (SCC0034)
138 Australian Parliamentary Privileges Act 1987

is limited (as per section 16 of the Act), although the court is responsible for enforcement including collection of any fine imposed under section 7. Sir Malcolm Jack advised how the provisions of the Australian Act might be suitably adopted in a UK context.[139]

79. The powers and sanctions in relation to committee proceedings afforded to the Parliament of Australia under the 1987 Act have not been "fully tested"; no individual has been fined or imprisoned under the Act to date.[140] The Clerk of the Australian House of Representatives explained that:

> One reason for this is that most witnesses do not need to be compelled to provide evidence, and usually welcome the opportunity to engage with parliamentary committee inquiries. Another reason may be that, throughout various evidence gathering processes, witnesses are regularly reminded of their rights and responsibilities, with accompanying explanations of the powers of the House to deal with possible contempts of Parliament. Furthermore, while committees are aware of their considerable powers, they generally exercise caution and discretion in exercising these powers. It is considered that the ability of the House to exercise its rights should be carefully weighed against the need to engage constructively with individuals and organisations.[141]

Assessing the effectiveness of the Australian model, the Clerk of the Australian House of Representatives concluded that the 1987 Act provided "significant clarification of the law and practice relating to parliamentary privilege", and together with Standing Orders, resolutions and years of accumulated practice provides a "coherent framework for identifying, considering, and responding to contempts, and potential contempts, of the House".[142]

80. The New Zealand Parliamentary Privileges Act 2014 also provides a legislative model for privilege and the operationalising of sanctions. The purposes of the Act are set out in section 3, namely to "reaffirm and clarify the nature scope and extent of privileges, immunities and powers exercisable by the House of Representative, its committees, and its members" and "ensure adequate protection from civil and criminal legal liability for communication of, and of documents relating to, proceedings in Parliament".[143] Notably, the Act avoids "comprehensive codification of parliamentary privilege" but defines "for the avoidance of doubt, "proceedings in Parliament" for the purposes of Article IX of the Bill of Rights 1688".[144] In relation to sanctions, the Act provides a power to fine for contempt.[145] Prior to 2014 the power to fine in New Zealand had been exercised on five occasions without statutory power, most recently in 2006 when a State-owned broadcaster was fined NZ$1000 for "disadvantaging" its chief executive on account of evidence he had given before a select committee.[146] After the power to fine was contested, the decision was

139 Sir Malcolm Jack (SCC0022); see also Daniel Greenberg (SCC0030) for further interpretation of the Australian Act
140 Claressa Surtees, Clerk of the Australian House of Representatives (SCC0032)
141 Claressa Surtees, Clerk of the Australian House of Representatives (SCC0032)
142 Claressa Surtees, Clerk of the Australian House of Representatives (SCC0032)
143 New Zealand Parliamentary Privileges Act, Section 3
144 New Zealand Parliamentary Privileges Act, Section 3, Subsection 2(a)
145 New Zealand Parliamentary Privileges Act, Section 22
146 David Wilson, New Zealand Clerk of the House of Representatives (SCC0033), page 3; the 2013 Committee noted that the privileges held by the New Zealand House of Representatives are defined as those enjoyed by the United Kingdom House of Commons in 1865 (para 56).

made to confirm the power in statute.[147] For the enforcement of fines, a certificate from the Speaker that a fine has been imposed requires the courts to treat the matter as if it were a fine imposed for contempt of court.[148] The New Zealand Parliament also has the power to imprison contemnors but this power has never been exercised.[149]

81. In New Zealand, as in other comparator Parliaments that have legislated specifically regarding committee powers, Standing Orders have been used to supplement, support, and clarify legislative provisions. For example, in New Zealand, Standing Orders define "Contempt of House" and spell out examples of contempts, which include "deliberately attempting to mislead the House or a committee" and "failing to obey an order of the House or a summons issued by order of the House or by the Speaker".[150] In Australia, resolutions of the House relating to principles of fair trial and procedures for dealing with witnesses have been appended to Standing Orders.[151]

82. The Houses of the Oireachtas in Ireland provides another comparator that applies a "dual model" of powers set out in a combination of Standing Orders and legislation. Certain committees of the Oireachtas have the power to compel witnesses and the production of documents; these powers are set out in both legislation and Standing Orders, which are engaged depending on the type of inquiry being conducted. A submission from the Houses of the Oireachtas explained:

> The vast majority of Oireachtas committee hearings are conducted solely pursuant to Standing Orders. In practice, it is only when a Committee is seeking to exercise powers of compulsion that it invokes its statutory powers.[152]

Committees that have powers to call for persons, papers and records in Standing Orders can seek to run a "Part 2 Inquiry", which is a statutory inquiry pursuant to the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.[153] There are different types of inquiries that can be conducted under Part 2 of the Act.[154] A Part 2 inquiry allows a committee to make certain defined findings of fact and provides the committee with certain statutory powers including to compel attendance and provision of documents.[155] Like Australia and New Zealand, the statutory powers of sanction are as yet "untested". However, the House of Oireachtas stated that "the fact […] that such sanctions exist is, perhaps, effective in and of itself, in that compelled witnesses are absolutely clear on the repercussions of non-compliance by them with a committee direction".[156]

83. Regarding select committee powers, perhaps the most similar international parliament to that of the UK is the Canadian Parliament, where the Standing Orders of the House of Commons and the Rules of the Senate of Canada set out the powers of parliamentary

147 David Wilson, New Zealand Clerk of the House of Representatives (SCC0033)
148 See David Wilson, New Zealand Clerk of the House of Representatives (SCC0033); Parliamentary Practice in New Zealand (pp. 494–501) also clearly sets out the powers the New Zealand Parliament has in relation to inquiries.
149 David Wilson, New Zealand Clerk of the House of Representatives (SCC0033), page 3
150 New Zealand Parliament, Standing Orders 409 and 410
151 See for example, Resolutions of the Australian House of Representatives appended to their standing orders; See Paul Evans evidence (SCC0023) for further on this.
152 Ireland, Houses of the Oireachtas (SCC0041)
153 Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, Part 2
154 Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, Part 2, Sections 7–11
155 Houses of the Oireachtas (SCC0041)
156 Houses of the Oireachtas (SCC0041), p. 12

committees to send for persons, papers and records.[157] However, in the Canadian model, the rules and practices governing parliamentary committees are founded in the Canadian Constitution, the Parliament of Canada Act, and in Standing Orders and resolutions.[158] It is also notable that in 2015 a Canadian parliamentary committee assessed that many of the powers to deal with contempts "may no longer make sense or seem relevant in a contemporary context" and that "a further review to assess their adequacy … ought to be considered".[159]

84. The US Congress provides for a variety of contempt powers in statute. In the US, both Houses of Congress have the power to invoke different types of contempt proceedings if a committee believes someone is obstructing its investigative powers, in addition to Congress' impeachment powers. The three types of contempt proceeding are: criminal contempt of congress (set out in statute passed in 1857); "inherent" contempt, which permits congress to rely on its own constitutional authority to punish a contemnor (similar to Parliament's own historic contempt powers); and congressional subpoenas.[160] Congressional subpoena powers allow both Houses to bring forward a civil lawsuit asking a court (the federal district court) to enforce a witness summons or request for information. These have been used in recent times, including in August 2020, when the Democrat-controlled House Foreign Affairs Committee initiated contempt proceedings against Mike Pompeo for his refusal to comply with subpoenas for documents connected to Ukraine that led to President Donald Trump's first impeachment.[161]

85. Each of the UK devolved bodies (the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly) have powers outlined in their respective devolution statutes to compel witnesses to attend its committees and order the production of papers.[162] For example, in Scotland it is a criminal offence for witnesses to fail to appear before a Holyrood committee or fail to provide evidence. A requirement under section 23 of the Scotland Act 1998 can be imposed by the Clerk giving the person in question notice in writing of the time, place and particular topics on which they are required to give evidence or the documents they are required to produce.[163] If the person to whom a notice is given fails to comply then they are guilty of an offence and are liable on summary conviction to a fine or imprisonment.[164]

86. Although the sanctions provided have never been applied in any of the devolved legislatures, the powers have been used as a threat to secure compliance.[165] Notably, the powers under section 23 of the Scotland Act were used recently on 22 January 2021 when a notice was formally issued to the Scottish Government by the Committee on the Scottish Government Handling of Harassment Complaints instructing the release of documents

157 For overview see Library of Parliament - Canada (SCC0036)
158 Parliament of Canada Act 1985
159 Senate, Standing Committee on Rules, Procedures, and the Rights of Parliament, A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century, Seventh Report, 2nd Session, 41st Parliament, June 2015, p. 57.
160 Congressional Research Service, Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure, 12 May 2017
161 "Engel announces contempt proceedings against Pompeo", U.S. House of Representatives Committee on Foreign Affairs, August 28 2020; "House Democrats launch contempt proceedings against Mike Pompeo", Guardian, August 28 2020
162 Scotland Act 1998, Section 23; Government of Wales Act 2006 Section 37, Northern Ireland Act 1998, Section 44; Similar powers also exist in States of Jersey, see Mark Egan (SCC0008)
163 Scotland Act 1998, Section 23 and Section 24
164 Scotland Act 1998, Section 25
165 Scottish Parliament (SCC0044), Q.2

including private messages between the SNP's chief operating officer Sue Ruddick and government figures in relation to allegations of misconduct by Alex Salmond.[166] The request was complied with.

Sanctions available in cases of non-compliance

87. In legislatures where committee powers are not set out in legislation, the powers tend to be limited in practice to admonition by the committee or the House, and in some instances denial of access to premises.[167]

88. Where there is legislation outlining forms of non-compliance with a committee of Parliament (either standing or investigative) there are always sanctions attached. These tend to include both fines and imprisonment. In examples where parliaments can set up investigative commissions, the sanctions for non-compliance tend to be equivalent or similar to sanctions for contempt of court.[168] In the UK, the maximum penalty for contempt of court is a period of imprisonment not exceeding two years or a fine not exceeding £2,500.[169]

89. The range of fines and prison terms in the international comparators we have looked at is broad. In the three devolved administrations, a person guilty of offence of refusing to provide evidence to a committee is liable to a fine of up to level 5 (currently £5,000) or a period of imprisonment not exceeding 51 weeks in the case of the Scottish Parliament or Welsh Senedd, or three months in relation to the Northern Ireland Assembly.[170] In the States of Jersey a person who disobeys a summons without reasonable excuse is liable to a fine of up to £10,000.[171] In France, failure to appear before a committee of inquiry, or refusal to give evidence or to take the oath is liable to a fine of €7500, or up to two years' imprisonment.[172] The New Zealand Parliamentary Privilege Act 2014 provides for a fine not exceeding NZ$1000 (around £500).[173] Comparatively, in Ireland, the Houses of the Oireachtas (Inquiry, Privileges and Procedures) Act 2013 provides on conviction on indictment for a fine not exceeding €500,000 or imprisonment for a term not exceeding five years, or both.[174] Notably the Australian Parliamentary Privileges Act 1987 makes a distinction between an individual (A$5000–around £2750) and a corporation (A$25,000–around £15,000).[175]

90. Imprisonment is often included as a sanction alongside fines in the statutory examples examined in this paper. In every case however the sanctions are applied through the courts (either as purely as an enforcement mechanism of a parliamentary decision, or with more procedural oversight over the whole process).

166 "Inquiry uses legal powers to seek Salmond evidence", BBC, 23 January 2021
167 See Israeli Knesset (SCC0042)
168 For example the German Inquiries Act, see Bundestag (SCC0040)
169 Contempt of Court Act 1981, Section 14
170 Scotland Act 1998, Section 25; Government of Wales Act 2006, Section 39, Northern Ireland Act 1998, Section 46; see also Paul Evans evidence (SCC0023) para 15
171 States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006, Section 22; see also Mark Egan (SCC0008)
172 French Senate (SCC0039), p. 1
173 New Zealand Parliamentary Privileges Act, Section 22
174 Houses of the Oireachtas (Inquiry, Privileges and Procedures) Act 2013, Section 75
175 Australian Parliamentary Privileges Act 1987, Section 7

91. We have considered the extent to which enhanced sanctions might be effective as a deterrent. The 1999 Committee recommended that the sanction for failure to comply with a summons should be a fine of an unlimited amount or up to three months' imprisonment.[176] By comparison, in establishing the power to fine for contempt the New Zealand parliament set itself a limit of NZ$1000. Some have questioned the persuasive effect of such a small amount, particularly when public figures or sector leaders are concerns.[177] The Clerk of the New Zealand Parliament explained:

> Although the matter was not widely debated in the House, the sum does reflect an acknowledgement that the power is of symbolic rather than punitive or deterrent value.

He noted that the Privileges Committee in New Zealand, when recommending the exercise of the power to fine in 2006 stated that, while the power to fine was necessary beyond "merely accepting an apology", the "quantum of the fine we recommend is less significant than the fact that Privileges Committee, for the first time in 103 years, is recommending that a fine be imposed".[178] He argued that the same feature was true of Parliament's contempt jurisdiction more generally; "the infrequency of the exercise of Parliament's penal powers only serves to enhance its symbolic impact".[179]

Recent international cases

92. International examples of contempt of parliament or equivalent are very rare. Most correspondents told us that compliance with parliamentary orders is very high, despite the need for applied pressure (via threatened sanctions) in some cases.[180]

93. A significant exception to that rule in recent times has been the US, where congressional powers, including subpoenas and impeachment have been used recently. Michael Stern, a former senior counsel in the House of Representatives, highlighted recent examples to us where Congress has had problems enforcing its subpoenas and demands for information against non-members, and particularly against current and former officials in the executive branch.[181]

94. Michael Stern suggested that the recent US experience might point to some of the dangers of a legislative model, especially with regards to the courts passing judgment on actions taken by the legislature.[182] He highlighted the recent Trump v. Mazars USA, LLP case (July 2020), in which the Supreme Court considered the use of congressional subpoenas issued by committees of the House of Representatives to obtain the tax returns of President Donald Trump. Whilst the ruling reaffirmed Congress' broad authority to conduct investigations for legislative purposes it also demonstrated the Court's ability to assess and evaluate the validity of a congressional subpoena.[183] The Supreme Court rejected the explanations offered by the congressional committees for why they needed the President's personal financial information and strongly implied the subpoenas were

176 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 324, also 310–311
177 For example see Dame Louise Ellman (SCC0004) para 9
178 David Wilson, New Zealand Clerk of the House of Representatives (SCC0033) p. 4
179 David Wilson, New Zealand Clerk of the House of Representatives (SCC0033) p. 4
180 See for example Scottish Parliament (SCC0044)
181 Michael Stern (SCC0024), para 3
182 Michael Stern (SCC0024)
183 See Trump v. Mazars USA, LLP, 591 U.S. __ (2020); see also Michael Stern (SCC0024), paras 12–14

politically motivated stating that they "[did] not represent a run-of-the-mill legislative effort but rather a clash between rival branches of government over records of intense political interest for all involved".[184]

95. A separate recent case study we have considered carefully is that of Ms Angela Kerins' dealings with a parliamentary committee in Ireland. After a failed attempt by the Public Accounts Committee of Dáil Éireann to summon Ms Kerins to provide further evidence, Ms Kerins subsequently took legal action against the Clerk of the Dáil and members of the Committee. An initial High Court ruling ruled against Ms Kerins, arguing that the case was not justiciable and on the grounds that the proceedings of the Oireachtas were protected by the principle of exclusive cognisance. However, on appeal, the Supreme Court ruled in favour of Ms Kerins declaring the actions of the Public Accounts Committee unlawful.[185] The Supreme Court ruling led to a major review by the Houses of the Oireachtas Service into the protocols and procedures concerning witnesses appearing before a Parliamentary Committee, which reported in December 2020.[186] We received a private briefing from officials on the working group.

96. The case of Ms Kerins has presented several significant considerations for our own inquiry. First, the Supreme Court's ruling provides a recent international example of judicial oversight of parliamentary proceedings in relation to the activity of a parliamentary committee. As explained in evidence submitted by representatives from the Oireachtas:

> Whilst our written Constitution provides for the exclusive cognisance of Parliament, and provides members and witnesses with absolute privilege for their utterances in parliament, the Kerins case proved that judicial oversight of the exercise by Parliament of its functions can occur when Parliament is engaging with non-members or strangers.[187]

Second, the Kerins case highlights the importance of effective safeguards for witnesses and due process in relation to committee proceedings. As a result of the Committee's initial hearing with Ms Kerins, which lasted seven hours with one short break, she suffered from shock, stress and anxiety. After her appearance she was hospitalised from the 2–11 March 2014 and attempted to take her own life on 14 March 2014. The Oireachtas' review on the back of the Supreme Court's judgements has subsequently made several changes to Standing Orders, including new remedies for persons adversely affected by parliamentary utterances.[188]

184 Trump v. Mazars USA, LLP, 591 U.S. __ (2020)
185 For overview see Houses of the Oireachtas (SCC0041)
186 Houses of the Oireachtas (SCC0041); Houses of the Oireachtas, Joint Report on the Response of the Houses of the Oireachtas to the Judgements of the Supreme Court in the Kerins Case (December 2020); see also Oireachtas Library and Research Service, "Spotlight: The Decision of the Supreme Court in Kerins v McGuinness - Context and Implications"
187 Houses of the Oireachtas (SCC0041)
188 Houses of the Oireachtas (SCC0041); See also Houses of the Oireachtas, Joint Report on the Response of the Houses of the Oireachtas to the Judgements of the Supreme Court in the Kerins Case (December 2020)

Conclusions

97. **We note the following from our assessment of the arrangements and recent case studies in other democratic legislatures:**

- **Most legislatures we have examined have legislated to give their investigative or scrutiny committees at least some statutory powers.**
- **Witnesses tend to comply with parliamentary committees in the vast majority of examples considered. Sanctions are rarely, if ever, deployed, although the threat of sanctions is recognised as an important aid to compliance.**
- **Where there is legislation outlining forms of non-compliance with a committee of parliament, the associated sanctions tend to be equivalent or close to the sanctions provided for contempt of court (namely, fines and imprisonment).**
- **Where legislatures have specifically legislated in the realm of parliamentary privilege, the provisions are necessarily supplemented by resolutions and Standing Orders, in order to preserve the principle of exclusive cognisance and to ensure due process and fair treatment of witnesses.**

98. **We consider that analysis of various international models and equivalent arrangements in the devolved legislatures supports our conclusion that new legislation to provide Parliament with appropriate powers is the most desirable of the three options available to the House. We believe it is possible to draft legislation that simultaneously strengthens the powers of Parliament, encourages compliance from witnesses, is consonant with human rights legislation and maintains the careful constitutional balance between Parliament and the courts.**

Specific legislative proposals considered by the Committee

99. Assisted by Speaker's Counsel, we have formulated and considered two possible legislative models appropriate for a UK context, which we call the "contempt of court" model and the "criminal offence" model.

The "contempt of court" model

100. An initial sketch of the "contempt of court" model can be found in an annex to the memorandum submitted to the Committee by Daniel Greenberg CB, Counsel for Domestic Legislation, Office of Speaker's Counsel.[189]

101. Under the contempt of court model, powers would be given to the High Court or the Court of Session in Scotland to grant remedies for a failure to obey a summons or a request to provide information or documents from a select committee, by issuing an injunction in response to a request made by the Speaker of the House of Commons. If the individual were to breach the injunction issued from the court, the matter could then be treated as if for a contempt of court. In principle, the proposal would be similar to the

189 Daniel Greenberg (SCC0021) see Annex

use of congressional subpoenas in the US where Congress can seek a civil judgement in the relevant court declaring that the person withholding information is legally obliged to comply with the subpoena.[190]

102. The statutory process under the contempt of court model would be triggered by a decision of the House to send a written certificate from the Speaker to the relevant court. Prior to that stage there would be a process set out in Standing Orders to ensure due process before certification. Any internal process would be included in Standing Orders and not on the face of the bill to preserve parliamentary privilege in respect of proceedings of the House.

103. Under this proposal, once the certificate had been sent by the Speaker, the responsibility for enforcement would lie with the courts, not Parliament. The enforceable sanction would be for contempt of court (although it would be confirmed by that stage that the individual would have committed a contempt of Parliament). The proposal therefore cedes the power of Parliament directly to enforce a sanction of a fine or imprisonment for contempt of Parliament to the court. However, the House would retain the initiative to admonish and would be able to address a failure to comply with a committee summons by seeking an injunction from the relevant court. The maximum sanctions for breach of a court injunction is imprisonment for two years and a fine of no more than £2,500, as set out in the Contempt of Court Act 1981.

104. The Counsel for Domestic Legislation advised that

> The principal advantage of this [model] is that it would remove any suggestion that Parliament was granting to itself dictatorial and oppressive powers. Although it would be for Parliament to seek an injunction, this would as always be a discretionary remedy, and it would be for the court to determine whether and how to use it. So long as the judiciary of the High Court continue to be perceived as independent of government and Parliament, the use of a judicial remedy with all the safeguards that this entails should avoid reputational damage for Parliament … At the same time, the High Court injunction could be a fast and effective way of preventing people from withholding cooperation from Select Committee inquiries.[191]

105. The main disadvantage of the model is that it would give the courts jurisdiction in relation to proceedings of select committees. As made clear by the evidence from the former Lord Chief Justice, the courts could not "simply be instructed by Parliament to give judicial effect to a Parliamentary Order" and would necessarily "have to be able to question that which Parliament is seeking to achieve by its Orders".[192] The courts would therefore be able to, if necessary, question the nature of a summons in the context of the Committee's inquiry, and in doing so be able to examine proceedings currently protected by Article IX. Daniel Greenberg provided an example of how this might work in practice:[193]

> (a) Were a Select Committee to summon the CEO of a multinational company to give evidence about an aspect of policy of the company, the

190 Clerk of the House [Dr John Benger] (SCC0016), para 14
191 Daniel Greenberg (SCC0021), paras 6–10
192 Lord Thomas of Cwymgiedd (SCC0013), para 7
193 Daniel Greenberg (SCC0021)

> High Court might refuse an injunction to compel attendance on the grounds that the presence of the CEO herself or himself was not necessary to the inquiry, where they had offered to send an appropriately knowledgeable and experienced representative.
>
> (b) In another case, however, where a Select Committee had decided to investigate on an ad hominem basis, the judge would be expected to conclude that anybody other than the witness summoned would be incapable of giving the information required by the Committee; whether or not the Committee was wise to conduct an ad hominem investigation, would not be something on which the court could opine.

The "criminal offence" model

106. The "criminal offence" model would create a criminal offence of failure without reasonable excuse to comply with a summons issued by a select committee of the House of Commons to attend the committee to answer questions, or to provide information or documents. In making failure to comply with a summons a criminal offence Parliament would be securing enforceable powers to punish contempt by means of a fine or imprisonment and would be aligning itself with the devolved Parliaments, as well as the Australian and New Zealand Parliaments.

107. The statutory process would again be triggered by a written certificate from the Speaker of the House of Commons to the relevant court that an individual has failed to comply with a summons. Prior to that stage there would be similar checks set out in Standing Orders, as under the contempt of court model above.

108. The significant difference between this model and the contempt of court model is that failure to comply with a summons from a select committee of the House of Commons would be a criminal offence, with the individual liable to a fine, imprisonment or both. A certificate from the Speaker to the relevant court would be taken as conclusive of the fact that the individual had failed to comply with the summons.

109. To ensure compliance with Article 6 of the European Convention of Human Rights (right to a fair trial), the courts would still need to be able review the committee's proceedings so as to determine whether the person had a reasonable excuse not to comply and to determine what punishment to impose. However, the statute could expressly state the matters which the Court could or could not consider, thereby preventing any consideration of committee proceedings not relevant to the summons and protected under Article IX of the Bill of Rights.

110. The principal advantage of this model is that it would provide clarity for select committees, witnesses and the public. It would restore the historic position that a grave contempt of Parliament (such as failure to comply with a summons issued by a House of Commons select committee) could result in severe sanctions beyond admonition. The model would however necessarily allow the courts a degree of review over parliamentary proceedings when considering what sanctions to be imposed, which would be a departure from the principle of exclusive cognisance. To preserve the relationship between Parliament

and the courts, the House's internal processes would need to be rigorous to ensure the overall process was human rights and natural justice compliant, and to prevent the courts from needing to question the lawfulness of any parliamentary proceedings.

111. **We recognise that there is a range of legislative possibilities that can be considered and that different models carry different benefits and risks.**

112. **We propose there are four key tests that any legislative option must pass:**

- **It needs to provide sufficient sanctions to enable Committees to undertake their work without fear of unreasonable obstruction or impediment.**
- **It must include provisions to reduce the risk of any unnecessary judicial oversight of parliamentary proceedings.**
- **It must be compatible with human rights law and with natural justice.**
- **It must be accompanied by a clear internal framework establishing due process and ensuring fair treatment of witnesses.**

3 Fair treatment of witnesses

Overview

113. In reopening our call for evidence at the start of the present Parliament we asked the following question:

> How can select committees effectively exercise their powers to summon witnesses and call for papers, while at the same time treating potential witnesses with fairness and due respect?[194]

Throughout our inquiry, we have been concerned to ensure that, whatever model is adopted to modernise the House's penal powers, the procedures accompanying the use of those powers deliver fairness and provide clarity for Members, witnesses and the public. We have also taken into account the explicit legal standards which need to be considered, most notably Article 6 of the European Convention on Human Rights.[195] This chapter outlines the House's current arrangements for fair treatment, considers evidence we received regarding fair treatment, and sets out our recommendations.

Current arrangements for fair treatment of witnesses before committees

114. The fair treatment of witnesses before committees is of central importance to the reputation of the select committee system, and of the House. Even if not always explicitly stated, ensuring fairness to witnesses is implicitly a consideration in the daily work of committees. Although committees rightly see delivering robust scrutiny as a key part of their work, this should never involve witnesses being treated unfairly or bullied. The current Clerk of the House explained:

> It is vital to the reputation of committees, the House and to public confidence in their processes that Members treat witnesses fairly and with courtesy. Public opinion is often part of the soft influence which persuades witnesses to attend or provide papers, but a committee is being scrutinised itself by the public. It is not inconceivable that egregious behaviour by a committee could reverse that influence.[196]

Sir David Natzler, the previous Clerk of the House, similarly stated:

> The treatment of witnesses should be of concern both because it is self-evidently right that an individual should be treated fairly and also because any subsequent action in respect of the evidence given by that witness, whether through the courts or within Parliament, is likely to consider the treatment of that witness.[197]

In the great majority of cases witnesses work closely with committees and no issues of unfair treatment by the committee or recalcitrance on behalf of the witness occurs.

194 "New chair appointed and inquiry into select committees and contempts resumed", Committee of Privileges press release, 1 June 2020

195 Eve Samson, (SCC0019) para 9

196 Clerk of the House [Sir David Natzler] (SCC0001), para 4.12

197 Clerk of the House [Dr John Benger] (SCC0016), para 25

115. Committee staff seek to ensure fair treatment by making sure that witnesses know what is expected of them before they appear to give evidence.[198] In addition to talking through practicalities, this frequently includes discussion of likely lines of inquiry in the evidence session. Committee staff can reassure a witness that they can reasonably expect the questions asked to be clear, to be treated with courtesy, and that the overall procedure of any evidence session will be fair. If witnesses have good reasons not to attend that is, in the vast majority of cases, accepted by the committee.[199]

116. Comparison is sometimes made between select committee evidence sessions and judicial hearings, particularly with regards to treatment of witnesses. However, despite being ostensibly similar in some regards, select committees operate in a political rather than judicial context; as such, they are not bound by the same rules for fair treatment as apply in the courts, for example when faced by a recalcitrant witness.[200] Mark Hutton, former Clerk of the Journals, explained that committees tend to operate in different "modes" depending on the nature of their inquiry.[201] Whilst committees most often operate in an evidence-gathering mode, at other times they are seeking to act as agents for change with a clearly set-out agenda, or seeking to undertake forensic examination when investigating a specific issue. In each case the experience for the witness is very different.[202] Due to their political context, although relations between witnesses and select committees are usually constructive and cooperative, there are occasions where the relationship can become combative and even hostile. Such instances of hostility are most likely to arise in instances when the witness has been initially reluctant, or has refused, to appear.

117. The House of Commons publishes a guide for witnesses giving written or oral evidence to a select committee (last updated in February 2016).[203] This guide provides a short section on the "Powers of select committees, and parliamentary privileges", in addition to providing practical advice about oral evidence sessions. There is also a high-level guide on the UK Parliament website providing guidance to witnesses on how to submit evidence to an inquiry.[204]

118. Although it does not strictly-speaking apply to the conduct of Members in proceedings (which is exclusively regulated by the Chair), Members of Parliament are also expected to adhere to Parliament's Behaviour Code, adopted in 2018, which applies to anyone visiting or working in Parliament and sets out clear guidelines on "how you should be treated, and how you should treat others".[205] As set out in the Code of Conduct for Members, MPs are "expected to observe the principles set out in the Parliamentary Behaviour Code of respect, professionalism, understanding others' perspectives, courtesy, and acceptance of responsibility".[206]

198 Eve Samson, (SCC0019) para 8
199 Eve Samson, (SCC0019) para 8
200 Clerk of the House [Sir David Natzler] (SCC0001), para 4.14
201 Q5 [Mark Hutton]
202 Q5 [Mark Hutton]
203 House of Commons, Guide for witnesses giving written or oral evidence to a House of Commons select committee, HC 126
204 https://www.parliament.uk/get-involved/committees/how-do-i-submit-evidence/
205 UK Parliament, Behaviour Code
206 House of Commons, The Code of Conduct together with the Guide to the Rules relating to the Conduct of Members, HC 1882, para 9

119. The House of Commons' Select Committee Team provides additional guidance and training to staff with regards to safeguarding, particularly in relation to inquiries that might engage with vulnerable adults or young people. A Witness Working Group has also recently been set up to review current arrangements and the experience for witnesses working with select committees.

120. There has been little dispute in the evidence we have received over the need to ensure that committees behave fairly towards witnesses. The Clerk of the House suggested that

> Regardless of the route chosen [in determining a solution to the issue of the exercise of Parliament's powers], a prior task may be to clarify what is expected of Members and witnesses regarding their behaviour, what happens under current processes and what would happen if there was a breach of these arrangements.

The lack of clarity regarding current arrangements was reflected in our evidence. Richard Gordon QC raised several issues with current protections for witnesses noting that "there is no body of 'law' that will inform those advising the witness" and suggests that some committees have in questioning witnesses "pushed at the boundary of what many lawyers would regard as legitimate questions".[207] Nigel Pleming QC commented that, whilst there are advantages to committees retaining a "flexible" approach to briefing witnesses, there is a "lack of transparency (and fairness)" in instances where the "rules of the game" are not put clearly to a witness before evidence is given.[208]

121. Maria Miller, former Chair of the Women and Equalities Committee, told us that lack of clarity about process impeded that committee's inquiry into the use of non-disclosure agreements (NDAs).[209] The Committee wanted to hear from representatives of the Arcadia group, after it was disclosed that Arcadia had made use of NDAs in handling allegations of sexual harassment and racial abuse of employees by Sir Philip Green. After trying to engage co-operatively, the Committee was forced to issue a summons for the attendance of Sir Philip Green and Ian Grabiner (CEO) due to lack of progress with negotiations over their attendance. In April 2019 lawyers acting for Sir Philip replied noting that neither Sir Philip nor Ian Grabiner intended to comply with the Committee's Order. Reflecting on this episode, Maria Miller commented:

> During our correspondence with lawyers acting for Arcadia, the Committee was mindful of the need to treat them fairly, both in terms of the process of issuing the invitation and seeking a date and in terms of the content of the evidence session. A clearer understanding of the process and reasonable timescales would help provide clarity to both potential witnesses and committees about what was reasonable. It was certainly the case that without this defined process, the Women and Equalities Committee felt the need to proceed with great caution. While fairness and due respect to witnesses should be a key part of any process, reluctant witnesses should not be allowed to use a committee's wish to act fairly against them, in order to frustrate and delay what are often vitally important committee inquiries.[210]

207 Richard Gordon QC, (SCC0003) para 32, para 36
208 Nigel Pleming QC (SCC0005), para 46
209 Maria Miller (SCC0017)
210 Maria Miller (SCC0017), p 2

Recommendations of the 1999 and 2013 Joint Committees on fair treatment

122. Both the 1999 and 2013 Joint Committees commented on the treatment of witnesses before select committees and made recommendations. Neither set of recommendations was adopted wholesale but the draft proposals annexed to the 2013 Committee's report have gone some way to modernising Parliament's approach to witnesses.

123. The 1999 Committee recommended that "the disciplinary procedures of both Houses should be revised to bring them into line with contemporary standards of fairness, including rights guaranteed by the European Convention of Human Rights".[211] It considered it essential that committees of both Houses should follow procedures providing safeguards "at least as rigorous as those applied in the courts and professional disciplinary bodies".[212] In relation to the risk of legal challenge in the European Court of Human Rights, the Committee remarked:

> The existence of this jurisdiction is a salutary reminder that, if the procedures adopted by Parliament when exercising its disciplinary powers are not fair, the proceedings may be challenged by those prejudiced. It is in the interests of Parliament as well as justice that Parliament should adopt at least the minimum requirements of fairness.[213]

124. The 1999 Committee identified "minimum requirements of fairness" for a Member accused of contempt as being:

- A prompt and clear statement of the precise allegations against the Member;
- Adequate opportunity to take legal advice and have legal assistance throughout;
- The opportunity to be heard in person;
- The opportunity to call relevant witnesses at the appropriate time;
- The opportunity to examine other witnesses;
- The opportunity to attend meetings at which evidence is given, and to receive transcripts of the evidence.[214]

125. The 2013 Committee sought to build upon the recommendations of the 1999 Committee. It recommended that each House should agree a series of resolutions and Standing Orders to ensure fairness. Although the Committee argued for Parliament to assert its powers rather than legislate, it acknowledged that "if it were decided simply to put the power to punish for contempts on a statutory footing, Standing Orders or Resolutions of the House should set out the minimum requirements for fairness".[215] The Committee recommended:

211 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, Executive summary
212 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 281
213 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 284
214 Joint Committee on Parliamentary Privilege, First Report of Session 1998–99, HC 241-I, para 281. The 1999 report defined the minimum requirements for fairness in relation to alleged contempts committed by Members. However, the Joint Committee also made clear that it would be "unwise to assume the requirements of fairness would be significantly less for members [than non-Members]" (para 283)
215 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 74

> Where a Committee is simply seeking evidence as part of the normal inquiry process, the standards of fairness should include the opportunity for witnesses to ask for matters to be dealt with in private, to give a clear account of their side of the story and to respond to any potentially damaging allegations made by other witnesses. In most cases, this is already common practice, but we recommend that such good practice should be formalised as part of Standing Orders."[216]

126. The 2013 Committee provided draft Standing Orders and Resolutions for the House of Commons to adopt in two annexes: the first annex provided a set of draft House of Commons resolutions outlining actions which might be treated as contempts;[217] the second annex provided a set of draft House of Commons Standing Orders codifying general provisions for powers, rights of witnesses, the exercise of penal powers, procedural fairness and the role of the Committee of Privileges.[218] The 2013 Committee's draft Standing Orders were broadly modelled on equivalent Resolutions and Standing Orders adopted in the Australian and New Zealand Parliaments.

127. Whilst neither the draft Resolutions nor Standing Orders have been formally adopted by the House, they have influenced the work of committees and continue to inform House practices regarding procedural fairness.[219] In the absence of the House's agreement to the Joint Committee's recommendations, the Liaison Committee agreed in January 2014 that the annexed provisions relating to fair procedure for witnesses should be applied as a code of practice.[220] The 2013 Committees recommendations have also informed the procedures of the Committee of Privileges. Our predecessor committee's report *Conduct of witnesses before a select committe*e (the News International case) commented on the need for fair treatment and drew attention to the draft Standing Orders annexed to the 2013 Report. The Committee agreed to a resolution on procedure that set out the maximum penalty it could impose (admonishment) and the procedure for different stages of the inquiry.[221] Similarly, in our predecessor Committee's investigation into the conduct of Mr Dominic Cummings the Committee explicitly agreed a resolution on process for the inquiry to ensure fair treatment.[222] The stated aim of the resolution by the Committee was to "follow good practice for select committees in their handling of evidence and witnesses in a way that is compatible with principles of openness, fairness to all parties and natural justice".[223]

128. During our inquiry, several clerks criticised the 2013 Committee's draft Standing Orders. Sir David Natzler commented on the 2013 Committee's draft Standing Orders:

216 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 85
217 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, Annex 2: Draft resolutions for the House of Commons
218 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, Annex 3: Draft House of Commons Standing Orders
219 Erskine May, 25th edition (London, 2019), para 11.22
220 Liaison Committee, Formal Minutes of the Committee, Session 2013–14; Q5 [Dr John Benger]
221 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, Appendix
222 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, Annex: Resolution on process
223 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490, para 6

> They can be read as a checklist of the circumstances in which a witness could reasonably claim to have been treated unfairly. But, as Standing Orders, they would introduce a rules-based and inflexible approach which might not serve either witnesses or committees well."

This view was further articulated by Mark Hutton, then Clerk of the Journals:

> For me, one of the drawbacks of the Standing Orders at the end of the 2013 Joint Committee report was that you could see that they had been drafted with the idea that someone was being really critically examined in front of a Committee. But you could also see that if they were put in front of someone who was being invited to a Committee to share their knowledge, they might make them feel even more intimidated than they would otherwise be. It was creating a bureaucracy around a process that does not need one.

129. Sir David recommended that a better approach for Parliament would be to adopt principles-based guidance endorsed through a resolution of the House, with the drawing up of more detailed rules devolved to the Liaison Committee.[224] The current Clerk of the House, Dr John Benger, has suggested that Parliament's Behaviour Code would be a good set of principles on which to base such guidance.[225] Alternatively, Paul Evans, a former Clerk of the Journals and Clerk of Committees, has suggested that the paragraphs of Article 6 of the European Convention on Human Rights might also provide a sensible model.[226]

Legal standards of fairness

130. In addition to making explicit the usual practice of fair treatment of witnesses in principles-based guidance, the House would also need to ensure its processes would meet explicit legal standards of fairness. Although the House is unlikely to face any challenge in the domestic courts due to Article IX protections under the Bill of Rights and the principle of exclusive cognisance, the House is potentially vulnerable to challenge in the European Court of Human Rights. Article 6 of the European Convention on Human Rights sets out the standards required for the determination of civil rights and obligations, and for those charged with a criminal offence. Any decision by the House determining whether someone was required to attend would therefore determine a right or obligation, and any penal consequence would require the safeguards applied to criminal offences.[227]

131. The 2013 Committee heard evidence from the Government at the time that:

> The Government does not believe that the current arrangements provide the kind of safeguards that individuals have a right to expect of any body with the power of prosecution … in order for the defendant in any such proceedings to be given a fair hearing, the House would have to significantly change its current procedures and practices.[228]

224 Clerk of the House [Sir David Natzler] (SCC0001), para 4.15
225 Clerk of the House [Dr John Benger] (SCC0016), para 26
226 Paul Evans (SCC0023), para 6
227 Eve Samson, (SCC0019) para 9
228 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 52

Greater due process in instances where the House might wish to exert its powers would therefore be essential for the credibility of any legislative solution. Eve Samson, current Clerk of the Journals, advised "the fairer the House's internal processes, the less there will be a danger of review of decisions to summon individual witnesses".[229]

132. One solution considered by the Committee to deliver greater due process would be to introduce a "gatekeeper" to act as a check on the use of any powers to compel witnesses by a select committee. Equivalent provisions are included in some of the international models we examined. In the New Zealand Parliament a witness summons has to be signed and served by the Speaker, and can only be done so once the Speaker is satisfied that the evidence, papers or records sought by the Committee are necessary to its proceedings and the Committee has taken reasonable steps to obtain them.[230] In the Houses of the Oireachtas committees must first seek consent in writing from the Committee on Procedure and Privileges in order to exercise its powers to send for persons, papers and records.[231] Notably, in the case of Ms Kerins, the Committee on Procedure and Privileges declined a request by the Public Accounts Committee (PAC) to summon Ms Kerins, explaining that it believed the examination to be "ultra vires".[232] Paul Evans suggested that the gatekeeper role would provide a "desirable check" for the House:

> The powers [to call for persons, papers and records] are delegated to a committee from the House–the House as a whole has a direct interest in ensuring that they are used proportionately and appropriately. This double lock also has the benefit of giving better assurance to the world at large, and to the courts if necessary, that the powers have been used only carefully and with forethought.[233]

Conclusion

133. **Ensuring fair treatment of witnesses is a central consideration in the daily work of committees. In the great majority of cases witnesses and committees co-operate and issues of recalcitrance do not arise. However, in any instance where a Committee might be seeking to exert its powers to compel attendance, there needs to be clear and robust procedures to ensure the minimum requirements of fairness are met.**

134. ***As a first step, and regardless of the adoption of any legislative model for penal powers, the House should adopt new principles-based guidance for fair treatment of witnesses before committees. These should be set out in standing orders or by resolution. The guidance must balance the need to provide clarity, fairness and due process for witnesses, against the need to avoid putting a new bureaucratic burden on committees which would impede their ability to take evidence swiftly and flexibly. We intend to consult fully with the Liaison Committee on how to strengthen the House's internal processes in this way.***

229 Eve Samson, (SCC0019) para 20

230 New Zealand Parliament, Standing Orders, para 196; See Paul Evans (SCC0023), paras 35–36

231 Section 76 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 provides that a committee wishing to issue a compellability direction must first obtain the consent of the "appropriate committee", which is defined as the Procedure Committee of the Dáil (see also Standing Orders 97 and 119 of the Dáil Éireann).

232 See Houses of the Oireachtas (SCC0041)

233 Paul Evans (SCC0023), para 36

135. **Fairness also requires that the public have reasonable access to the rules and expectations of each House.** ***The key aspects of any new rules should be included in updated guidance for witnesses appearing before select committees.***

136. **Any legislative proposal will need to be accompanied by robust internal procedures to ensure compliance with the legal standards of fairness required in the determination of any offence and enforcement of any sanction. This is essential to satisfy the courts that the House's internal processes are fair and robust, and to prevent any further examination of committee proceedings in their consideration of any sanction.**

4 Our proposal

137. This chapter details our proposal for a legislative solution to address the issues raised in our consideration of the exercise and enforcement of select committee powers. A draft Parliamentary Committees (Witnesses) Bill is set out as Annex 4 to this Report. We seek to consult on our proposal before making final recommendations to the House in response to the referral of 27 October 2016.

Overview

138. Our proposal is for new legislation in line with the "criminal offence" model outlined in Chapter 2. A bill should be introduced to create a criminal offence of failure to comply with a summons to attend or to provide information, issued by a select committee, without reasonable excuse. To ensure harmonious operation, the provisions of our proposal would apply across the United Kingdom, as Parliament is a UK-wide institution. The offence would be construed by the courts of each jurisdiction (subject to the rules of forum determining which courts were competent to try allegations) in accordance with standard principles by reference to the context of Parliament.[234] The House's processes and commitment to fairness would be set out in accompanying Standing Orders and/or by resolution. They would clearly set out the requirements and steps taken in the enforcement of any summons, as well as establish the rights of witnesses. Our model bill only addresses the specific issue of recalcitrant witnesses in relation to House of Commons select committees; whether legislation should also encompass the enforcement of powers to sanction other contempts, or include equivalent provision in relation to House of Lords committees, is a matter for further consultation.

Working assumptions

139. Based on the findings detailed in this report, we have identified the following working assumptions for the drafting of our legislative proposal:

a) Neither the House nor its committees is practically able to enforce attendance or production of information or documents from recalcitrant witnesses. They do not have the powers of a court of law to instruct police officers, or arrange for imprisonment or payment of a fine.

b) The House should have the power to enforce the attendance of, or production of information or documents by, recalcitrant witnesses. In practice, such enforcement will need to be carried out by a court of law. This requires legislation.

c) To ensure participants in parliamentary processes are treated fairly, and to minimise any risk of subsequent legal challenge (including to the ECHR), the House must be in a position to demonstrate due process before referring a case to a court.

d) The more decision-making takes place within Parliament rather than being transferred to the courts, the greater the need for Parliament to demonstrate due process.

234 See section 2(3) of the draft Bill in Annex 4. The draft Bill takes into account the existence of the three legal jurisdictions across the UK. The Committee intends to consult with representatives of each.

e) Any proposal for enforcement must recognise that recalcitrant witnesses are a minority, and should not significantly curtail the flexibility and speed in setting up meetings which select committees value.

f) There should be a 'gatekeeper' decision-maker (which we suggest should be the Committee of Privileges) to consider applications from committees to use their power to summon. The gatekeeper should act as a check on the behaviour of committees to ensure any powers to summon are used proportionately and appropriately.

g) The question for the court to decide in relation to any sanction must be as simple and as clear-cut as possible, to limit scope for the court to consider wider questions about internal House or committee processes, or the merits of the summons.

Steps followed in the case of a recalcitrant witness summoned by a select committee

140. The following steps set out what might happen in the case of a recalcitrant witness.

- After seeking but failing to secure the voluntary co-operation of a witness, a select committee issues a summons to that person and delivers it to them. The summons specifies the day, time and place at which the named person shall attend or provide any requested information, or by which they should have provided a reasonable excuse for not complying.
- The named person does not comply with the summons because they neither attend nor provide a reasonable excuse by the specified date.
- The select committee reports to the House that this constitutes a failure to comply with a summons without reasonable excuse. The case stands automatically referred to the gatekeeper committee (the Committee of Privileges) to consider the matter.
- The Committee of Privileges considers the select committee's case for issuing the initial summons and provides the witness with a chance to provide an explanation of any reasonable excuse for non-attendance by a specified date.
- If satisfied that (a) the select committee has a legitimate need to require the individuals attendance, or the information or documents requested, (b) has treated the person fairly, and (c) that the individual has not provided a reasonable excuse for non-compliance, the Committee of Privileges puts a motion before the House, stating that the individual has failed to comply with a summons and instructing the Speaker to issue a certificate to the Courts to that effect.
- The House agrees to the motion put before the House by the Committee of Privileges.
- The Speaker issues a written certificate that an individual has failed to comply with a summons.

- The Court would then determine whether the individual had a reasonable excuse and, if not (a criminal offence having therefore been committed), what punishment to impose.

141. At various stages in the above process the individual would have the opportunity to change their mind about appearing or provide arguments for why they had a reasonable excuse for not appearing. The hope and expectation would be that the inevitable attention garnered by the above process and the risk of a criminal conviction would be sufficient to deter the witness from failure to comply before the application of any sanctions set out in legislation.

Conclusion

142. **This proposal is the best amongst the range of legislative possibilities. It gives select committees the power they need to compel recalcitrant witnesses to attend or to provide information or documents, while balancing with this the need to ensure fair treatment of witnesses and preserve the protections afforded to House proceedings under Article IX of the Bill of Rights 1689.**

143. **We do not seek to disguise the fact that our proposal would encroach upon protections previously afforded to parliamentary proceedings under Article IX of the Bill of Rights. However, a limited reduction in the extent of exclusive cognisance is a price worth paying to secure effective enforcement. Our proposal gives scope for the court to consider the nature and purpose of a committee's summons, but only for the purposes of ensuring compliance with the UK's international human rights obligations, in particular Article 6 of the European Convention on Human Rights (the right to a fair trial).**

5 Conclusion and questions for consultation

144. **We put this report forward for consultation as a preliminary proposal, having carefully considered the issues and examined comparative arrangements in other democratic legislatures. The responses to the questions set out below will inform the next stage of our consideration. We intend to consult widely, including seeking the views of current and former Members of both Houses, legal professionals and members of the judiciary from across the different jurisdictions of the United Kingdom, academics, and current and former Clerks. We will be taking further oral evidence to explore others' opinions of the strengths and weaknesses of our proposal, before presenting a final report for consideration by the House.**

- **What is the primary role of select committees and what should be the practical limits of the application of their powers (as delegated to them by the House)?**
- **Do you agree with our assessment of the three options, and our conclusion that a legislative solution is the best available option?**
- **Do you think the proposed draft Bill provides an appropriate solution to the issue of recalcitrant witnesses before committees?**
- **What do you think the maximum sanction should be for an individual found guilty of an offence of failure to comply with a summons?**
- **Should the legislation be extended to encompass the enforcement of sanctions related to other contempts, or to make equivalent provision for House of Lords committees, or to deal with any other matters relating to parliamentary privilege?**
- **How should the House set out its internal processes and commitment to fair treatment in a way that provides sufficient due process, whilst maintaining the flexibility and effectiveness of the current select committee system?**
- **The draft Bill provides a power to summon non-Members to attend or to provide information or documents to a committee. Should equivalent powers be included to summon Members of the House, or for a committee of one House to summon Members of the other House?**
- **Are there any other issues within the scope of the matter referred to us - "the exercise and enforcement of the powers of the House in relation to select committees and contempts" - that you think should be dealt with in our final recommendations to the House?**

Conclusions and recommendations

Introduction and background

1. Since the initial referral of 27 October 2016 the issue of the exercise and enforcement of select committee powers has become, in the words of the Clerk of the House, "of greater relevance and urgency" given recent high profile cases of non-Members refusing to appear before select committees or submit evidence. (Paragraph 25)

2. Our intention is to put forward a credible set of proposals as soon as possible. This report contains our preliminary proposals, on which we will consult, and then take further oral evidence before presenting a final report for agreement by the House. (Paragraph 26)

Options for the Committee

3. There have been significant developments in the exercise of select committee powers even since the referral of this matter to us on 27 October 2016. Recent cases–such as the refusal of Mr Dominic Cummings to appear before the DCMS Committee–have revealed the impotence of the House to enforce the powers it delegates to select committees. (Paragraph 45)

4. The problem of recurring recalcitrance, or simply open disregard of a Committee summons, is no longer a hypothetical one. Individuals invited to give evidence know that they can treat committees with disdain, and by extension the House, without any fear of meaningful penalty. Their lawyers can advise them that the House effectively has no powers to enforce a summons. In many instances a potential witness may stall in response to a committee invitation in the hope that the Committee will move on. We acknowledge that examples of witnesses point-blank refusing to attend or provide information are rare. When this occurs, however, it can have serious consequences for the committee and its work, and for the reputation of the House. (Paragraph 46)

5. We therefore reject the option of doing nothing and agree that the current uncertainty cannot be allowed to continue. (Paragraph 47)

6. We agree that "assertion alone can neither add to the existing powers of the two houses nor require the compliance or co-operation of others". We consider that any attempt to exercise the House's historic powers to fine or imprison would contravene the Human Rights Act 1998 and the UK's international obligations under the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). (Paragraph 55)

7. The 2013 Committee urged the two Houses to "rise to the challenge" of asserting the continuing existence of each House's jurisdiction over contempt, but they have failed to do so. Neither House has implemented the 2013 Committee's recommendations. There was an opportunity to take this course of action in 2013, but the case for doing so now is much weaker. The 2013 Committee argued that this was a matter of institutional confidence, but that confidence has recently been shaken by the cases of

recalcitrance we described earlier. As developments since 2013 have demonstrated, practical assertion of the Houses' powers is now unlikely even to be considered, let alone implemented without significant reputational risk. (Paragraph 56)

8. We conclude that reassertion of the House's historic powers to fine and imprison by resolution or in Standing Orders no longer offers a workable solution to the problems facing select committees. The risk is that it would be regarded as an empty gesture and only add to the present confusion. (Paragraph 57)

9. We recognise, however, that there are aspects of this issue that the House can and should address by assertion, including updated commitments to fair treatment of witnesses and provision for due process in the exercise of its powers. (Paragraph 58)

10. There is no straightforward solution to the difficulty the House has faced in exercising and enforcing select committee powers. If there were it would have been adopted years ago. All the options on offer carry potential benefits and risks. (Paragraph 70)

11. While recognising the risks in a legislative solution, notably the potential erosion of exclusive cognisance and the danger of weakening the status of other privileges, we conclude that legislation is now the only option that can provide the House with the enforceable powers it needs to summon witnesses and order provision of papers. The inability effectively to penalise, and therefore deter, a failure to comply with a summons is preventing the effective discharge of select committee functions. Only legislation can put the powers of the House to punish this form of contempt beyond doubt and provide the necessary clarity to MPs, officials, witnesses, and the public. (Paragraph 71)

12. As we set out elsewhere in this Report, we also propose that, in the interim before the passage of legislation, the House proceeds by way of resolution and standing order changes to set up improved processes for ensuring the fair treatment of witnesses. This task was recognised and started by the 2013 Committee and needs to be completed. (Paragraph 72)

Legislative possibilities

13. We note the following from our assessment of the arrangements and recent case studies in other democratic legislatures: (Paragraph 97)

    - Most legislatures we have examined have legislated to give their investigative or scrutiny committees at least some statutory powers.
    - Witnesses tend to comply with parliamentary committees in the vast majority of examples considered. Sanctions are rarely, if ever, deployed, although the threat of sanctions is recognised as an important aid to compliance.
    - Where there is legislation outlining forms of non-compliance with a committee of parliament, the associated sanctions tend to be equivalent or close to the sanctions provided for contempt of court (namely, fines and imprisonment).

- Where legislatures have specifically legislated in the realm of parliamentary privilege, the provisions are necessarily supplemented by resolutions and Standing Orders, in order to preserve the principle of exclusive cognisance and to ensure due process and fair treatment of witnesses. (Paragraph 97)

14. We consider that analysis of various international models and equivalent arrangements in the devolved legislatures supports our conclusion that new legislation to provide Parliament with appropriate powers is the most desirable of the three options available to the House. We believe it is possible to draft legislation that simultaneously strengthens the powers of Parliament, encourages compliance from witnesses, is consonant with human rights legislation and maintains the careful constitutional balance between Parliament and the courts. (Paragraph 98)

15. We recognise that there is a range of legislative possibilities that can be considered and that different models carry different benefits and risks. (Paragraph 111)

16. We propose there are four key tests that any legislative option must pass:

- It needs to provide sufficient sanctions to enable Committees to undertake their work without fear of unreasonable obstruction or impediment.
- It must include provisions to reduce the risk of any unnecessary judicial oversight of parliamentary proceedings.
- It must be compatible with human rights law and with natural justice.
- It must be accompanied by a clear internal framework establishing due process and ensuring fair treatment of witnesses. (Paragraph 112)

Fair treatment of witnesses

17. Ensuring fair treatment of witnesses is a central consideration in the daily work of committees. In the great majority of cases witnesses and committees co-operate and issues of recalcitrance do not arise. However, in any instance where a Committee might be seeking to exert its powers to compel attendance, there needs to be clear and robust procedures to ensure the minimum requirements of fairness are met. (Paragraph 133)

18. *As a first step, and regardless of the adoption of any legislative model for penal powers, the House should adopt new principles-based guidance for fair treatment of witnesses before committees. These should be set out in standing orders or by resolution. The guidance must balance the need to provide clarity, fairness and due process for witnesses, against the need to avoid putting a new bureaucratic burden on committees which would impede their ability to take evidence swiftly and flexibly. We intend to consult fully with the Liaison Committee on how to strengthen the House's internal processes in this way.* (Paragraph 134)

19. Fairness also requires that the public have reasonable access to the rules and expectations of each House. *The key aspects of any new rules should be included in updated guidance for witnesses appearing before select committees.* (Paragraph 135)

20. Any legislative proposal will need to be accompanied by robust internal procedures to ensure compliance with the legal standards of fairness required in the determination of any offence and enforcement of any sanction. This is essential to satisfy the courts that the House's internal processes are fair and robust, and to prevent any further examination of committee proceedings in their consideration of any sanction. (Paragraph 136)

Our proposal

21. This proposal is the best amongst the range of legislative possibilities. It gives select committees the power they need to compel recalcitrant witnesses to attend or to provide information or documents, while balancing with this the need to ensure fair treatment of witnesses and preserve the protections afforded to House proceedings under Article IX of the Bill of Rights 1689. (Paragraph 142)

22. We do not seek to disguise the fact that our proposal would encroach upon protections previously afforded to parliamentary proceedings under Article IX of the Bill of Rights. However, a limited reduction in the extent of exclusive cognisance is a price worth paying to secure effective enforcement. Our proposal gives scope for the court to consider the nature and purpose of a committee's summons, but only for the purposes of ensuring compliance with the UK's international human rights obligations, in particular Article 6 of the European Convention on Human Rights (the right to a fair trial). (Paragraph 143)

Conclusion and questions for consultation

23. We put this report forward for consultation as a preliminary proposal, having carefully considered the issues and examined comparative arrangements in other democratic legislatures. The responses to the questions set out below will inform the next stage of our consideration. We intend to consult widely, including seeking the views of current and former Members of both Houses, legal professionals and members of the judiciary from across the different jurisdictions of the United Kingdom, academics, and current and former Clerks. We will be taking further oral evidence to explore others' opinions of the strengths and weaknesses of our proposal, before presenting a final report for consideration by the House.

- What is the primary role of select committees and what should be the practical limits of the application of their powers (as delegated to them by the House)?
- Do you agree with our assessment of the three options, and our conclusion that a legislative solution is the best available option?
- Do you think the proposed draft Bill provides an appropriate solution to the issue of recalcitrant witnesses before committees?
- What do you think the maximum sanction should be for an individual found guilty of an offence of failure to comply with a summons?

- Should the legislation be extended to encompass the enforcement of sanctions related to other contempts, or to make equivalent provision for House of Lords committees, or to deal with any other matters relating to parliamentary privilege?
- How should the House set out its internal processes and commitment to fair treatment in a way that provides sufficient due process, whilst maintaining the flexibility and effectiveness of the current select committee system?
- The draft Bill provides a power to summon non-Members to attend or to provide information or documents to a committee. Should equivalent powers be included to summon Members of the House, or for a committee of one House to summon Members of the other House?
- Are there any other issues within the scope of the matter referred to us - "the exercise and enforcement of the powers of the House in relation to select committees and contempts" - that you think should be dealt with in our final recommendations to the House? (Paragraph 144)

Annex 1: Committee and House summons for witnesses to attend committees (2001–2021)

Committee and House Orders/Summons papers or witnesses to attend committees 2001–2021

Committee/type of Order	Date and details
Northern Ireland Affairs Committee (2021)	On 3 March 2021 the Northern Ireland Affairs Committee summoned William Shawcross, former UK Special Representative on UK victims of Qadhafi-sponsored IRA terrorism to attend the Committee on 24 March 2021. He attended and gave evidence.
Digital, Culture, Media and Sport Committee (current) (2018) Orders for witnesses Order for papers	On 10 May 2018, the DCMS Committee ordered Alexander Nix, former CEO of Cambridge Analytica, to attend and give evidence in connection with its inquiry into Fake News. Mr Nix attended and gave evidence on 6 June. On 10 May 2018, The Digital, Culture, Media and Sport Committee ordered Dominic Cummings, campaign director for Vote Leave, to attend and give evidence on 22 May 2018 in connection with its inquiry into Fake News. Mr Cummings failed to attend and on 5 June the Committee published a report stating it would seek an Order of the House for Mr Cummings to attend. On 7 June 2018 the House ordered that Mr Dominic Cummings give an undertaking to the Committee, no later than 6pm on 11 June 2018, to appear before that Committee at a time on or before 20 June 2018. He failed to do so. On 16 April 2018, the DCMS Committee issued an Order for papers from Dr Emma Briant at the University of Essex under the Fake News inquiry. The order was complied with.
Treasury Committee (current) (2018) Order for papers	On 7 February 2018, The Treasury Committee ordered the Financial Conduct Authority to produce a specific report regarding the treatment of customers in RBS's Global Restructuring Group which it had previously been unwilling to provide. The document was received and subsequently published by the Committee.
Treasury Committee (2016) Order for witness	On 3 May 2016, The Treasury Committee ordered the attendance of Matthew Elliott, Chief Executive Vote Leave. He attended and gave evidence on 7 June 2016.
Business, Innovation and Skills Committee (2016) Order for witness	On 15 March 2016, the Business, Innovation and Skills Committee ordered the attendance of Mike Ashley, owner of Sports Direct. Mr Ashley appeared before the Committee.

Committee/type of Order	Date and details
Northern Ireland Affairs Committee (2014) Order for witness	In two separate instances, the Northern Ireland Affairs Committee issued orders for attendance, in connection with its 'On the Runs' inquiry. The Committee ordered Tony Blair, former Prime Minister, to attend on 10 December 2014. He attended and gave evidence on 13 January 2015. On 7 January 2015 the Committee ordered Mark Sweeney and Simon Case of the Northern Ireland Office to attend. They attended and gave evidence on 19 January.
Home Affairs Committee (2014) Order for witness	On 28 October 2014, the Home Affairs Committee ordered the attendance of Sir Paul Kennedy, Interception of Communications Commissioner. He attended and gave evidence on 4 November.
Home Affairs Committee (2014) Order for witness	On 25 February 2014, the Home Affairs Committee ordered the attendance of Sir Mike Walker, Intelligence Services Commissioner. He attended and gave evidence on 18 March.
Public Accounts Committee (2011) Order for witness	On 9 November 2011, the Committee of Public Accounts ordered the attendance of Dame Helen Ghosh, former Head of the Rural Payments Agency. She attended and gave evidence on 14 November.
Culture, Media and Sport Committee (2011) Order for witness	On 14 July 2011 the Culture, Media and Sport Committee ordered the attendance of Rupert Murdoch, Chair and CEO of News Corporation and his son James Murdoch, Chair and CEO of News Corporation International. Both Rupert and James Murdoch attended and gave evidence on 19 July.
Public Accounts Committee (2011) Order for witness	On 11 July 2011, the Committee of Public Accounts ordered the attendance of Sir Ian Kennedy, then chair of the Independent Parliamentary Standards Authority. He attended and gave evidence on 13 July.
Welsh Affairs Committee (2009) Order for witness	On 24 November 2009, the Welsh Affairs Committee ordered the attendance of Edwina Hart, Welsh Assembly Government Health Minister. She attended and gave evidence on 15 December.

Annex 2: Parliament's historic powers to compel attendance

Power to fine

1) The House of Commons has not imposed a fine since 1666, when a fine of £1000 (roughly valued at £200,000 today) was imposed upon Mr Thomas White who had absconded after he had been ordered into the custody of the Serjeant at Arms.[235]

2) The House of Commons' power to fine has been questioned since at least the 18th century. In 1762, Lord Mansfield in R v Pitt and R v Mead, remarked in relation to a case about bribery at an election that the House of Commons did not have the power to fine.[236] In 1833, the Fines Act implicitly confirmed the understanding that the House of Lords had to power to impose fines, whereas the House of Commons did not.[237] However, the New Zealand House of Representatives, whose privileges were defined as those enjoyed by the United Kingdom House of Commons in 1865, has used its inherent powers to fine, as recently as 2006.[238]

3) In the 20th century committees looking at matters of privilege in 1967, 1977, and 1999 all recommended legislation to give the Commons a statutory power to fine, notably on the basis that it did not already have recourse to that power. It is therefore generally considered that the House of Commons does not nowadays have the power to fine non-Members.[239]

Power to imprison

4) The House of Commons historically has exercised powers to imprison persons and temporarily to detain persons in custody. The Commons' powers of detention were exercised frequently until the end of the 19th century; Erskine May notes that between 1810 and 1880 there were 80 committals.[240] Committals during this period were almost equally divided between Newgate Prison and the Serjeant at Arms although many of those sent to Newgate were briefly taken into the custody of the Serjeant at Arms. There were also a few instances in 1775 of people being committed to the Gatehouse Prison in Westminster.[241] The length of custody varied considerably (ranging between 1 day and four months) and the period of committal automatically ended at the end of a session.

5) Parliament's power to imprison was last used in 1880 with the committal of a Member Charles Bradlaugh, and the imprisonment of a non-Member Charles Grissell in the same year.[242] Bradlaugh was committed to custody for disobeying an Order of the

235 Committee of Privileges, Third Report of Session 1976–77, HC 417, para 36 [Report accessible via ProQuest UK Parliamentary Papers]. The Lords have not imposed a fine since 1801.
236 Erskine May, 25th edition (London, 2019), para 11.27
237 Erskine May, 25th edition (London, 2019), para 11.27
238 New Zealand Clerk of the House (SCCXXXX), Q.3; see also Joint Committee on Parliamentary Privilege, Report of Session 2013–14, Parliamentary Privilege, HC 100, para 56
239 Clerk of the House [Sir David Natzler] (SCC0001), para 3.7
240 Erskine May, 25th edition (London, 2019), para 11.23, fn 2
241 Committee of Privileges, Third Report of Session 1976–77, HC 417, Appendix G [Report accessible via ProQuest UK Parliamentary Papers].
242 Erskine May, 25th edition (London, 2019), para 11.23, fn 2

House. Charles Grissell was committed after asserting he could control the proceedings of a private bill committee in relation to the building of a bridge and then not attending the House as ordered.[243]

6) Erskine May notes that no warrant or order for committal has been issued by either House for many years.[244] However, by virtue of Standing Order No. 161, the Serjeant at Arms does have the power to temporarily commit someone to custody without a warrant. Under the Standing Order, the Serjeant can take into custody strangers who intrude themselves into the House or other misconduct themselves (in the Gallery or elsewhere).[245] Persons who are taken into custody by virtue of SO NO. 161 are normally discharged by the rising of the House on the day in question. This power is used and is "useful", in addition to the powers of the police, within the parliamentary precincts.[246]

Power to admonish

7) The power to admonish non-Members is undoubted and is used in current practice, most recently in March 2019 with Mr Dominic Cummings after he failed to comply with an order to attend the Digital, Culture, Media and Sport Committee.[247]

8) It was previous practice in both Houses that, in appropriate cases, non-Members were brought to the Bar to answer charges of contempt. Any admonishment was delivered by the Speaker in the Chamber during a sitting. The last time a non-Member was summoned to the Bar of the House of Commons to apologise was in 1957. Mr John Junor, a Newspaper editor, was deemed to have given an inadequate apology to the Committee of Privileges for an article he had written in which he claimed that Members were evading petrol rationing.[248] At the bar Mr John Junor expressed his "sincere and unreserved apologies", but stated that his initial article was an "inescapable subject of comment in a free Press".[249]

9) In 1992 the House agreed a resolution reprimanding two Members for their part in taking cash for questions, without causing reprimand to be delivered orally thereafter.[250] This set the precedent for admonishment to take the form of a resolution of the House, without any requirement for the contemnor to appear in person and without any further action taken against that individual. Mr Crone and Mr Myler, who were admonished by the House in 2016 in respect of phone hacking, were the first non-Members to be admonished in this way.[251]

243 HC Deb, 22 July 1879, vol 248 cc971–4,
244 Erskine May, 25th edition (London, 2019), para 11.25
245 Erskine May, 25th edition (London, 2019), para 11.24
246 Clerk of the House [Sir David Natzler] (SCC0001), para 3.1
247 Committee of Privileges, First Report of Session 2017–19, Conduct of Mr Dominic Cummings, HC 1490
248 HC Deb, 24 January 1957, Volume 563, col 404 [Commons Chamber]
249 HC Deb, 24 January 1957, Volume 563, col 404 [Commons Chamber]
250 Committee of Privileges, First Report of Session 2016–17, Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton, and News International, HC 662, para 7
251 Mr Tom Crone, Legal Manager at News Group Newspapers Limited and News International and Mr Colin Myler, editor of the News of the World 26 Jan 2007- July 2011, were formally admonished by the House on 27 October 2016.

Annex 3: Summary of international comparator models

The Committee received 52 responses from other legislatures to its questionnaire on committee powers and contempts. The questionnaire was circulated primarily through the ECPRD (European Centre for Parliamentary Research and Documentation) and CATS (Clerks-at-the-Table) networks. We are grateful to everyone who responded. We have published a selection of the responses on our website. The following table provides summaries of some of the models we examined in more depth.

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
Parliament of Australia (House of Representatives and the Senate)	Both the House of Representatives and the Senate have the power to summon witnesses and request the production of documents set out in Standing Orders.[252] There are some limitations on these powers: for example, Members of either House cannot be summoned and there are limitations in relation to evidence that is sought from various classes of witnesses, such as public officials and parliamentarians from Australia's states and territories.[253] If witnesses refuse to comply with an order from a Committee then there are sanctions available to it by the authority of either House. The Australian Parliamentary Privileges Act 1987 sets out the penalties that may be imposed by a House of Parliament for an offence against that House.[254] These include imprisonment for a period not exceeding 6 months, or imposition of a fine (up to $5,000 for a natural person or up to $25,000 for a corporation). In practice, neither House has ever exercised these powers under the Act, including in relation to non-compliance by a witness summoned to give evidence to a committee.[255]

252 House of Representatives, Standing Orders, standing order 236; Senate, Standing Orders, Standing Order 25(14)
253 Claressa Surtees, Clerk of the House Australian House of Representatives, (SCC0032), p. 2
254 Parliamentary Privileges Act 1987, Section 7
255 Claressa Surtees, Clerk of the House Australian House of Representatives, (SCC0032), p. 3

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
Parliament of Canada (House of Commons and the Senate of Canada)	The powers of Parliamentary committees in Canada to send for persons, papers and records are set out in Standing Orders.[256] In both Houses, should witnesses refuse to appear before a committee or provide evidence the committee could adopt a motion ordering the individual to comply.[257] Standing committees do not have the power to punish a failure to comply with their orders but can report the matter to the respective House. The House can then act in a manner it considers appropriate. Among the options are to endorse the committee's summons, thus making it a House order rather than just a committee order, and to declare the witnesses guilty of contempt. Historically, the offence of contempt has carried sanctions including reprimand before the Bar of the House and imprisonment until the end of the session, although these sanctions have not been used recently. In 2015 a report by the Senate's Standing Committee on Rules, Procedures and the Rights of Parliament highlighted the need to review the Parliament's disciplinary powers.[258]
European Parliament (EP)	The EP has "a right of inquiry" under Article 226 of the Treaty on the Functioning of the European Union (TFEU); the EP at the request of a quarter of its component Members can set up a temporary Committee of Inquiry to investigate "alleged contraventions or maladministration in the implementation of Union law".[259] The detailed provisions governing the exercise of the right of inquiry are determined by the EP after obtaining the consent of the Council and the Commission.[260] An EP committee of inquiry does not have the power to subpoena witnesses but it can request the attendance of officials or servants of the relevant Member State or institution to appear before the Committee.[261] The sanctions available for non-compliance depend on the "category of witness". For example, if a Member State fails to co-operate with an EP committee of inquiry by failing to designate an official to appear before the committee then the EP in principle may, if all the necessary conditions are met, request the Commission to initiate infringement proceedings against that Member State. This theoretical possibility has never been used by the EP.[262]

256 House of Commons, Standing Orders, Standing Order 108(1)(a); Senate of Canada, Rules of the Senate of Canada, Rule 12(9)(2)

257 Library of Parliament, Canada, (SCC0036), p. 2

258 Senate, Standing Committee on Rules, Procedures, and the Rights of Parliament, A Matter of Privilege: A Discussion Paper on Canadian Parliamentary Privilege in the 21st Century, Seventh Report, 2nd Session, 41st Parliament, June 2015, p. 57.

259 Treaty on the Functioning of the European Union (TFEU), Article 226

260 Treaty on the Functioning of the European Union (TFEU), Article 226

261 AFCO Secretariat, European Parliament (SCC0038), p. 2

262 AFCO Secretariat, European Parliament (SCC0038), p. 2

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
French Parliament (National Assembly and Senate)	A legal framework for committees was set out in 1958 as part of the establishment of the Fifth Republic, and provides rules for the creation of committees, their remit, their powers, general proceedings, and criminal sanctions against specific offences.[263] All the rules and powers are common to both Houses. Since 1996 the powers have applied to standing committees as well as ad hoc investigative committees. In 2011 the law was changed to allow the powers of Committees to be exercised against Government in certain instances. Legal literature considers parliamentary committees as "quasi-judicial bodies" since they can summon anybody to testify before them and require the use of public force against reluctant witnesses, and offences are of a criminal nature like those relative to judicial proceedings. Committees have the right to summon any person; non-compliance is an offence liable to a fine of up to €7500. There are different sanctions depending on the type of offence; for example, conviction of perjury can be met with up to 5 years imprisonment and a €75000 fine.[264] These sanctions are not exercised by the Committee or either House. The offence triggers a judicial inquiry at the request of the Committee's Chairperson, and the matter is referred directly to the Prosecutor General and a criminal lawsuit is initiated. The most recent example of a referral to the Prosecutor General dates from March 2019 when a committee of the Senate laid charges of perjury against 3 witnesses, including the Chief of staff and a former aid of President Emanuel Macron, in relation to the "Benalla Case".[265]
German Bundestag	The German Bundestag has the power to set up investigative Committees under the Committees of Inquiry Act "on the motion of one quarter of its Members".[266] These are separate to standing committees, which do not have equivalent powers. The appointment decision must determine the subject of the inquiry. A committee of inquiry can take public evidence and "the rules of criminal procedure shall apply mutatis mutandis to the taking of evidence". Committees of inquiry can call for persons, papers, and records, and can also request the presentation of evidence by the Federal Government, federal authorities, corporations, and public servants. The powers of Committees of Inquiry are set out in the Act and sanctions for failure to comply include "administrative" fines of up to €10,000 or imprisonment.[267]

263 French Senate (SCC0039), p. 1; see also National Assembly, The National Assembly in the French Institutions (November 2014), pp.345–347

264 French Senate (SCC0039)

265 See French Senate (SCC0039)

266 German Basic Law, Article 44(1); see German Bundestag (SCC0040)

267 German Bundestag (SCC0040) Q.3

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
Irish Parliament (Houses of the Oireachtas)	The committees of the Oireachtas have the power to compel witnesses and the production of documents. These powers are set out in both legislation and Standing Orders, which are engaged depending on the type of witness appearing before the committee. There are effectively 3 categories of witness that can appear before Oireachtas committees: voluntary witnesses; accountable witnesses; and compelled witnesses.[268] Voluntary witnesses come before the committees pursuant to the Standing Orders. Accountable witnesses are persons who are legally accountable to the Oireachtas committees pursuant to legislation. Compelled witnesses are compelled pursuant to legislation. Most committees do not have powers to call for Persons, Papers and Records (PPR). The committees that do have PPR powers must seek consent to use them in writing from the Committee on Procedure and Privileges, which acts as a gatekeeper. Committees that have PPR powers can seek to run a "Part 2 Inquiry", which is a statutory inquiry pursuant to the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.[269] Failure to comply with an order made by a Committee pursuant to the Act may amount to an offence, with sanctions including fines and imprisonment.[270]
New Zealand House of Representatives	Apart from the Committee of Privileges, which has "quasi-judicial" status, standing committees in the New Zealand House of Representatives do not have the power to send for persons, papers and records.[271] Committees must apply to the Speaker under Standing Order 197 for the issue of a summons. The Speaker acts as a gatekeeper and must be satisfied that the summons is necessary to the committee's proceedings and that all other reasonable steps to obtain evidence have been taken. Ad hoc committees, with PPR powers, can be established by resolution of the House, as occurred with the Epidemic Response Committee established in March 2020.[272] The House has a range of sanctions available to it that may be applied to witnesses found to be in contempt including formal censure (written or verbal), fines (not exceeding NZ$1000) and imprisonment.[273] These powers are confirmed in the Parliamentary Privilege Act 2014.[274]

268 Houses of the Oireachtas (SCC0041) Q.1
269 Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, Part 2
270 Houses of the Oireachtas (SCC0041) Q.3
271 David Wilson, New Zealand Clerk of the House (SCC0033), Q.1
272 David Wilson, New Zealand Clerk of the House (SCC0033), Q.2
273 David Wilson, New Zealand Clerk of the House (SCC0033), Q.3
274 New Zealand Parliamentary Privilege Act

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
Northern Ireland Assembly	Committees in the Northern Ireland Assembly, whether standing, statutory or ad hoc, have powers under the Northern Ireland Act 1998 to call for persons, papers and records.[275] These powers are reflected in Standing Orders.[276] A person who fails to comply with a notice issued pursuant to the 1998 Act is "guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months".[277] The Assembly sets out a Guide for Witnesses appearing before Assembly Committees.[278] The Assembly's Code of Conduct for Members includes applicable principles of conduct for Committee proceedings.[279]
Scottish Parliament	Under Section 23 of the Scotland Act 1998 the Scottish Parliament and its committees have the power to call witnesses and documents; these powers can be exercised against the Scottish Government and other Scottish public authorities.[280] The powers only apply to evidence or documents which relate to a subject for which the Scottish Government has general responsibility.[281] The powers are also included the Parliament's Standing Orders.[282] A person guilt of an offence without reasonable excuse under Section 25 the 1998 Act is liable on summary conviction to a fine not exceeding level 5 on the standard scale (up to £5,000) or to imprisonment for a period not exceeding three months.[283] The same applies where a person deliberately alters, suppresses, conceals or destroys any document which is required to be produced by a section 24 notice.[284]

275 Northern Ireland Act 1998, Section 44; for overview see Northern Ireland Assembly (SCCXXXX)
276 Standing Orders of the Northern Ireland Assembly, 47 and 53–60
277 Northern Ireland Act 1998, Section 45
278 Northern Ireland Assembly, Guide for Witnesses appearing before Assembly Committees
279 Northern Ireland Assembly, The Code of Conduct and The Guide to the Rules relating to the Conduct of Members
280 Scotland Act 1998, Section 23
281 Scottish Parliament (SCC0044), Q.1
282 Standing Orders, Rule 12.4.1
283 Scotland Act 1998, Section 25
284 Scottish Parliament (SCC0044), Q.3

Parliament/Legislature	Summary of committee powers to require attendance of witnesses and the production of documents
US Congress	The US Congress has a variety of contempt powers, by which it can respond to certain acts that it considers to obstruct the legislative process.[285] In recent times its contempt powers have been most often employed in response to non-compliance with a congressional subpoena, either summoning a person to give evidence or to request documents. Congress has three formal methods by which it can combat non-compliance, with each invoking the authority of a separate branch of government. First, there is criminal contempt of congress, which is set out in statute passed in 1857 and permits congress to certify a contempt citation to the executive branch for the criminal prosecution of the contemnor. Second, it has "inherent" contempt powers, which permit Congress to rely on its own constitutional authority to detain and imprison a contemnor until the individual complies with the demand (these powers are considered dormant). Third, it can appeal to the judicial branch to enforce a subpoena, seeking a judgement from a federal court that the individual in question is legally obliged to comply with the subpoena. Congress can also use its power of impeachment against an executive officer who refuses to comply with its subpoenas or interferes with its investigative authority.
Welsh Senedd	Sections 37–40 of the Government of Wales Act 2006 outline powers in relation to witnesses and documents. These powers are also set out in Standing Orders.[286] Section 37(1) of the Act provides that the Senedd may require any person to give evidence or produce papers concerning "any matter relevant to the exercise by the Welsh Ministers of any of their functions … ".[287] The Senedd cannot impose requirements on a person who is not involved in the exercise of functions in relation to Wales. Under section 39 of the Act a person guilty of an offence is liable to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 51 weeks or both.[288] The powers under the Act have not been used by a Committee or the Senedd as a whole, but the power to call for papers has been referenced by the opposition.[289]

285 For an overview of Congress' Contempt powers see Congressional Research Service (Todd Garvey), "Congress's Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure", (May 2017)

286 Welsh Parliament, Standing Orders of the Welsh Parliament, Standing Orders 17.50–17.51

287 Government of Wales Act, Section 37(1)

288 Government of Wales Act, Section 39

289 Clerk of the House [Dr John Benger] (SCC0016), Paras 10–14

Annex 4: Draft Bill for consultation

Parliamentary Committees (Witnesses) Bill

A

B I L L

TO

Create an offence of failure to comply with a summons issued by a House of Commons Select Committee.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

1 Failure to comply with summons

(1) It is an offence for an individual to fail without reasonable excuse to comply with a summons issued by a Select Committee of the House of Commons—

(a) to attend the Committee to answer questions, or

(b) to provide information or documents.

(2) An individual guilty of an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding two years, a fine or both.

(3) A written certificate of the Speaker that an individual has failed to comply with a summons as referred to in subsection (1) shall be taken to be conclusive of the matters specified in the certificate.

(4) In determining the matters specified in subsection (5) a court—

(a) may consider the nature and purpose of the Committee's summons, but

(b) may not consider any other aspect of the Committee's proceedings.

(5) The matters referred to in subsection (4) are—

(a) whether a person had a reasonable excuse; and

(b) what punishment to impose.

(6) Rules of court may make provision about proceedings under this section (including about timing and forum).

2 Commencement, transitional, extent and short title

(1) This Act comes into force on the day on which it is passed.

(2) An offence is not committed under section 1 in respect of a summons issued before the commencement of this Act.

Parliamentary Committees (Witnesses) Bill

(3) This Act extends to England and Wales, Scotland and Northern Ireland.

(4) This Act may be cited as the Parliamentary Committees (Witnesses) Act 2021.

Formal minutes

Tuesday 27 April 2021

Members present:

Chris Bryant, in the Chair

Andy Carter	Mark Fletcher
Alberto Costa	Sir Bernard Jenkin
Chris Elmore	Anne McLaughlin

Draft Report (*Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 144 read and agreed to.

Annexes 1 to 4 agreed to.

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

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

Written evidence was ordered to be reported to the House for printing with the Report.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Monday 08 July 2019

Dr John Benger, Clerk, House of Commons; **Mark Hutton**, Clerk of the Journals, Journal Office, House of Commons; **Chris Bryant MP**; **Sir Bernard Jenkin MP** Q1–63

Tuesday 22 October 2019

Sir Malcolm Jack KCB, former Clerk of the House of Commons, **Ms Eve Samson**, Principal Clerk, House of Commons, and **Lord Andrew Tyrie**, former Chair of the House of Commons Treasury and Liaison Committees and the Parliamentary Commission on Banking Standards. Q64–93

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

SCC numbers are generated by the evidence processing system and so may not be complete.

1 Alcluith, Lord McFall of (Senior Deputy Speaker, House of Lords) (SCC0006)

2 Australia House of Representatives (SCC0032)

3 Australia Senate (SCC0034)

4 Benger, Dr John (Clerk of the House of Commons) (SCC0016)

5 Canada (House of Commons) (SCC0035)

6 Canada (Library of Parliament) (SCC0036)

7 Canada (Senate) (SCC0037)

8 Cash, Sir William (Chair, European Scrutiny Committee, House of Commons) (SCC0010)

9 Cwmgiedd, Lord Thomas of (SCC0013)

10 Egan, Mark (Greffier, States of Jersey) (SCC0008)

11 Ellman, Dame Louise (SCC0004)

12 Environmental Audit Select Committee (SCC0028)

13 European Parliament (SCC0038)

14 Evans, Paul (SCC0023)

15 Field, Frank (Former Member, House of Commons) (SCC0007)

16 Foreign Affairs Committee (SCC0026)

17 France (Senate) (SCC0039)

18 Germany (Bundestag) (SCC0040)

19 Gordon QC, Richard (SCC0003)

20 Greenberg, Daniel (Counsel for Domestic Legislation, Office of Speaker's Counsel, House of Commons) (SCC0021), (SCC0030)

21 Hickman QC, Professor Tom (barrister-at-law, Professor of Public Law, University College London (UCL)); and Balfour-Lynn, Harry (SCC0031)

22 Howarth, David (Professor, University of Cambridge) (SCC0018)

23 Ireland Houses of the Oireachtas (SCC0041)

24 Israel Knesset (SCC0042)

25 Judge, Lord (Crossbench Life peer, House of Lords) (SCC0025)

26 KCB, Sir Malcolm Jack (Former Clerk, House of Commons) (SCC0002), (SCC0022)

27 Lidington, Sir David (Leader of the House of Commons) (SCC0011)

28 Miller, Mrs Maria (Former Chair, Women and Equalities Committee, House of Commons) (SCC0017)

29 Natzler, David (Clerk, House of Commons) (SCC0001)

30 New Zealand House of Representatives (SCC0033)

31 Northern Ireland Assembly (SCC0043)

32 Pleming QC, Nigel (SCC0005)

33 Samson, Ms Eve (Principal Clerk, House of Commons) (SCC0019)

34 Scottish Parliament (SCC0044)

35 Stern, Michael (Director, Point of Order) (SCC0024)

36 Transport Select Committee (SCC0029)

37 Treasury Select Committee (SCC0027)

38 Tyrie, Lord (Crossbench Member, House of Lords) (SCC0020)

39 Wollaston, Dr Sarah (Chair of the Liaison Committee, House of Commons) (SCC0015)

40 Wollaston, Dr Sarah (Member, House of Commons) (SCC0012)

41 Wright, Mr Iain (Former Member, House of Commons) (SCC0009)