

European Scrutiny Committee

House of Commons London SW1A 0AA

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From: Sir William Cash MP

30 June 2021

Chris Bryant MP
House of Commons
London SW1A 0AA

Dear Chris

I hope this letter finds you well.

On behalf of the Committee, I would like to congratulate you on your Report *‘Select Committees and contempts: clarifying and strengthening powers to send for persons, papers and records’*. Its value is clear and it will undoubtedly serve as a reference for discussions on the reform of Select Committee powers and contempts in the House and beyond.

In responding to your Report, my Committee chose to focus on the second consultation question you asked:

- Do you agree with our assessment of the three options, and our conclusion that a legislative solution is the best available option?

As you will be aware, I submitted written evidence to your predecessor Committee in April 2017. My evidence argued that legislation is not desirable as an inducement and, as your Report recommends, a punishment, for witnesses who fail to comply with a summons issued by a Committee to attend or provide information without reasonable excuse. I have read your Report carefully and my opinion on this matter has not changed.

The protections afforded to parliamentary proceedings under Article IX of the Bill of Rights is a guarantee of its independence and its ‘exclusive cognisance’. Legislation, of the type you set out, would give the courts locus over parliamentary proceedings. This jurisdiction would, admittedly, be limited and, I note, a concern you have sought to address in the draft Bill you have put out for consultation. There is, however, a danger that affording the courts the (circumscribed) jurisdiction your recommendation would entail could lead to unnecessary and undesirable change elsewhere; with new legislation—and court oversight—of other areas of parliamentary business. I

highlight similar concerns raised by the Clerk of the House. Parliament's supremacy in areas of its own cognisance must remain beyond question.

In evidence, I argued that further thought should be given to the House reasserting its historic powers (including to fine and imprison persons). I note your consideration of similar views on pages 18-19 of your Report. As a Member of the 2013 Joint Committee on Parliamentary Privilege, I am of the opinion that the draft Standing Orders and resolutions we proposed should be looked at more carefully and considered as a first step towards reform. Clearly articulating the House's powers and its approach to contempts is a logical and sensible starting point for change. Should this prove problematic (for any of the reasons you have articulated), it would then be for the House to (re)consider other possible ways forward including legislation. It may be that the options for reform explored in your Report are not mutually exclusive but should be viewed as steps (with reassertion the first).

As a final point, I am in favour of the guidance you suggest for the fair treatment of witnesses and agree that its introduction should not be tied to the success—or otherwise—of your proposal for penal legislation. As and when forthcoming, I will review it with interest.

I am copying this letter to your Clerks (Robin James and Ben Street).

With all good wishes

CHAIR