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1. I am an academic at Bangor Law School specialising in Constitutional Law, with a particular interest in Parliament, the monarchy, and constitutional reform. With Dr John Stanton, I am the author of *Public Law,* published by Oxford University Press. Of specific interest to this inquiry is my interest in the powers of select committees and parliamentary privilege. This has resulted in my article, 'Select Committees: Understanding and Regulating the Emergence of the "Topical Inquiry"', published in Parliamentary Affairs.[1] That research has informed this written evidence.

Summary

2. This Committee has highlighted the emerging issue of some witnesses showing a reluctance to give evidence.[2] Happily, it remains the case that it is still very rare for a witness to refuse to co-operate entirely.[3]

3. The draft Parliamentary Committees (Witnesses) Bill ('Draft Bill') will achieve its aim of resolving this problem, and in practice, give witnesses no choice other than to comply or ultimately risk committing a criminal offence. It is difficult to envisage circumstances where potential imprisonment would be preferable over co-operating with a committee. In principle, the Draft Bill bolsters the constitutional principle of the accountability of government to Parliament.

4. However, this argument cannot be advanced when committees conduct (what I have termed) as 'topical inquires'. These inquiries are primarily concerned with the actions of non-government actors. There is a role for committees to undertake such inquiries; however, it is at best a residual function when other accountability mechanisms have failed. In any event, topical inquiries lay outside the scope of SO No 152, and the application of the Draft Bill to such inquiries could create difficulties. At the very least, and as the Liaison Committee has already recommended, the scope of SO No 152 should be broadened to include topical inquires.

5. If SO No 152 remains unchanged, then a reluctant witness to a topical inquiry may have a 'reasonable excuse' not to comply, and the committee is open to a challenge on human rights grounds. More broadly, the procedure of committees needs to ensure that witnesses are treated fairly.

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[1] Craig Prescott, 'Select Committees: Understanding and Regulating the Emergence of the "Topical Inquiry"' (2019) 72 Parliamentary Affairs 879. Of course, should the Committee require, I would be happy to provide a copy.

[2] House of Commons Committee of Privileges, *Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records* (HC 2019-21, 350).

[3] It maybe thought that case of Dominic Cummings, is entirely exceptional, explainable by the very particular context and circumstances prevailing in the aftermath of the 2016 referendum, which generated a political dynamic without precedent in modern times.

6. A particular concern is that by only considering non-attendance, the Draft Bill creates an anomaly. Those witnesses who refuse to answer a summons may face a fine or imprisonment of up to two years. By contrast, third parties who punish or harm a witness for the evidence they give; or those witnesses who mislead or provides false evidence will still receive the more lenient punishment of admonishment. This may be more of an issue in topical inquiries, given the contexts in which they are likely to arise.

7. Resolving these issues would require legislation that goes considerably further than the Draft Bill. Consequently, given the limited scale of the problem of reluctant witnesses so far, it might be best to leave things as they are. At least, for now.

Introduction

8. Most of the questions asked by the Committee's call for evidence are inter-connected and ultimately stem from the fundamental question, what do we want committees to achieve? As this written evidence explores, committees are undertaking a greater variety of inquiries, including 'topical inquiries'. Addressing that development will help resolve many of the issues the call for evidence raises.

9. For clarity, my focus is on the department select committees, and I have focused on the issue of witnesses giving evidence. However, my comments apply equally to the issue of witnesses making documents available. All references to Erskine May, are to the 25th edition, as available on https://erskinemay.parliament.uk.

Powers of Select Committees

10. Departmental select committees enjoy the powers delegated to them by the House as expressed through the Standing Orders. SO No 152 provides that the remit of departmental select committees is 'to examine the expenditure, administration and policy of the principal government departments . . . and associated public bodies', and, to carry out that task, have the power to 'send for persons, papers and records'.[4]

11. SO No 152, and the committees it creates, is an expression of the constitutional principle that the government is accountable to Parliament.[5] It follows that the government should make itself available to facilitate this process of accountability. Thankfully, a substantial majority of witnesses comply with the requests of select committees. This reflects the status that select committees enjoy within Parliament and, more broadly, as generally providing an effective form of scrutiny, with committee reports having a good track record of influencing policy.

12. It might be thought that other than a few exceptions, there is generally little problem. Any request from a select committee to the government should be taken seriously and should invariably be complied with unless there is a very good reason, and such cases will be extremely rare. However, Annex 1 of the Committee's report does provide a list of exceptions to this general position, and it is disappointing that, included in that list,

[4] House of Commons, *Standing Orders – Public Business* (HC 2019, 314).
[5] As recognised by the Supreme Court in *R (Miller) v The Prime Minister* [2019] UKSC 41.

are particularly notable and senior figures from government, including a former Prime Minister.

13. The Draft Bill changes the calculation that potentially recalcitrant witnesses face. Currently, a witness who refuses to comply with a select committee may suffer the embarrassment of media coverage of their refusal (raising the question, 'what have they got to hide?'), then further coverage of the issue of the summons, and then, if they comply with the summons, their ultimate attendance. In theory, some witnesses may still conclude that non-compliance is a lesser evil than answering the committee's questions.[6] The Draft Bill, in ultimately making it an offence not to comply with a summons, would be expected to comply at some stage of the procedure within Parliament outlined in the report before the Speaker issues the certificate of non-compliance.[7] In making it an offence not to comply with a summons, in practice, witnesses now have no choice other than ultimately to comply. In that sense, the Draft Bill resolves the problem, albeit one that occurs relatively rarely.

14. Indirectly, the Draft Bill may also change the calculation that committees make. By providing a greater guarantee that witnesses will co-operate with committees, MPs may succumb to the temptation of conducting high profile inquiries, focusing on the actions of leading figures. Potentially, this could be at the expense of other, less newsworthy, but equally important tasks expected of committees, as outlined by the Liaison Committee in the core tasks.

15. To give an example at random, a 'campaigning' MP committed to banning animal testing could exploit the appearance of a witness who conducts such testing, using it as an opportunity for grandstanding, criticising, and chastising such witnesses. These 'questions' could then be clipped and tweeted to the gallery of that MP's social media followers. Such individualism would chip away at the voluntary, consensual, and cross-party culture of committees which has been at the core of their success since 1979. This is clearly a broader concern than the issues raised by the Draft Bill but highlights how a shift from a voluntary culture towards compulsion increases the need for clearer procedural safeguards for such witnesses.

"Topical Inquiries"

16. This shift away from the voluntary culture is an emerging dynamic visible in some committee inquiries in recent years. Notably, the twelve inquiries listed in Annex 1 of this Committee's report includes the following three entries:

    - **Mike Ashley:** Business Innovation and Skills Committee, *Employment Practices at Sports Direct* ('*Sports Direct*')[8]

[6] For example, Dominic Cummings, and indeed his non-compliance may even have furthered his reputation at the time for being 'anti-elite'. This may remain a wholly exceptional case due to the peculiarities of politics in the aftermath of the Brexit referendum in 2016.

[7] House of Commons Committee of Privileges, *Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records* (n 2) [141].

[8] (HC 2016-17, 219).

- **Rupert and James Murdoch:** Culture, Media and Sport Committee, *News International and Phone-Hacking* ('*Phone-hacking*')[9]
- **Alexander Nix, Dominic Cummings and Dr Emma Briant:** Digitial, Culture, Media and Sport Committee, *Disinformation and 'fake news': Interim Report*; ('*Fake news*')[10]

In my research, I identified *Sports Direct* and *Phone-hacking* as illustrative examples of 'topical inquiries'. Two other examples I highlighted are:

- Work and Pensions and Business, Innovation and Skills Committees, *BHS*,[11]
- Digital, Culture, Media and Sport Committee, *Combatting Doping in Sport.*[12]

Although I did not focus on *Fake news* in my research, this too possessed some of the characteristics of a topical inquiry. In its report, this Committee considers that there has been a 'notable increase in the number of summonses in recent times'.[13] Topical inquiries are one reason for that increase.

17. What is meant by the term 'topical inquiry', is that the relevant committee is not primarily concerned with investigating a government or public agency as provided for by SO No 152, but with the actions of individuals or companies within the private sector. The committee embarks on a fact-finding investigation focusing on a controversy or scandal that has received some media coverage.

18. As shown by Annex 1, a feature of topical inquires is a reluctance on the part of key witnesses to co-operate with a committee. Consequently, the more topical inquiries undertaken, the more witnesses that will be reluctant to co-operate, meaning that, if enacted, committees will increasingly rely on the Draft Bill to secure the attendance of witnesses.

19. The issue is more significant than it may first appear. Even if their attendance was not ordered, the experiences of Sir Philip Green in *BHS* and Lord Coe in *Combatting Doping in Sport* show that key witnesses to a topical inquiry may, at best, have a fractious relationship with their respective committees.

The relationship between witnesses and committees

20. This is perhaps unsurprising. In the four example inquiries, witnesses were subject to probing and, at times, hostile questioning, sometimes for an extended period, as the committee sought to establish particular facts. Witnesses know they are likely to be subject to criticism in the committee's eventual report. *Prima facie*, witnesses have very little to gain by appearing before a committee and potentially a lot to lose.

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[9] (HC 2010-12, 903-I).
[10] (HC 2017-19, 363).
[11] (HC 2016-17, 54).
[12] (HC 2017-19, 366).
[13] House of Commons Committee of Privileges, *Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records* (n 2) [10].

21. The relationship between committee and witness is likely to be strained from the very start. The first response from a witness to an invitation to give evidence to a committee could well be, 'who are *they* to question me? What has it got to do with the committee?' Unlike witnesses in more typical inquires, those involved in a topical inquiry are not fulfilling the broader constitutional function of facilitating the accountability of government to Parliament. They do not belong to a broader culture of being accountable to Parliament and may have very little connection to politics or the broader political process.

22. Instead, their attention is drawn in a different direction. At the broadest level, those in the private sector are required to comply with the law where relevant, with contracts they enter into, and, more specifically, with any regulatory requirements or other instructions from a regulator. *BHS* is an example of where the Committee risked treading on territory more properly occupied by specific regulators. In this case, the Pensions Regulator, the Financial Reporting Council, and the Serious Fraud Office were all conducting their investigations into the collapse of the retail chain. Notwithstanding the committee's attention, these other forms of accountability will continue to apply, as required by the law.

23. This leads to the question, what is the aim of a committee when undertaking a topical inquiry? Given that it cannot supplant pre-existing forms of accountability, the only answer is that a committee seeks to hold individuals to account *morally*, out of a concern that other inquiries may be too slow or prove to be ineffective. This was shown in *BHS*, which concluded that BHS' 'massive pension deficit' was ultimately 'Sir Philip Green's responsibility', and 'found little evidence to support the reputation for retail business acumen for which he received his knighthood'.[14] In this way, a committee may damage an individual or company's reputation through the conclusions it reaches. Understandably, a witness may wish to push back against this in order to protect their reputation.

24. A further question is whether it is appropriate for a committee to undertake such an exercise. For all the media coverage Sir Philip Green's evidence generated, only after the Pension Regulator completed its investigation and threatened litigation did Sir Philip Green contribute £363 million to the BHS pension schemes.[15] Given that topical inquiries are triggered at least partly in response to headlines, the risk is that committees become primarily concerned with higher-profile figures. Those with a lower profile alleged to have committed similar acts of wrongdoing may slip under the radar.

25. Evidence sessions from the main protagonists in the four example inquiries all generated significant media coverage. A risk is that, given the attention that a topical inquiry has generated, a committee may feel obligated to find criticisms of witnesses in order to justify their inquiry. For example, in *Combatting Doping in Sport*, the Committee

[14] Work and Pensions and Business, Innovation and Skills Committees, *BHS* (n 11) [35] and [171]. Frank Field, the chair of the Work and Pensions Committee also made it clear that Sir Philip Green was subject to a 'mega, mega, mega-moral responsibility' to address the pension deficit (HC Debs, 20 October 2016, col. 985).

[15] Although clearly, the Committees' report contributed to the general public pressure for Sir Philip to make a contribution.

criticised both the IAAF and Lord Coe. However, the IAAF was found to have acted in a 'scientifically sound' way to the allegations of blood doping, [16] and in a subsequent inquiry, the IAAF Ethics board found that Lord Coe complied with the IAAF's Code of Ethics, invoking evidence – an email from Sir Michael Beloff QC – which was available to the Committee.[17]

26. A further risk is that topical inquiries become increasingly attractive to MPs, crowding out the more typical work of committees. MPs could become attracted to the coverage their attention-grabbing questions receive while being seen to be bringing the powerful to heel in a manner that plays well beyond Parliament. It is an exaggeration of the dynamic outlined in paragraph 13, but the Draft Bill could intensify this.

The Interplay between Topical Inquiries, Standing Order No 152, and the Draft Bill

27. As explained above, topical inquiries risk taking a committee outside the scope of SO No 152. Currently, there is no external check on whether a committee acts within its remit. Erskine May is clear that how a committee interprets their order of reference is a matter for that committee,[18] and ultimately this interpretation is protected by the Bill of Rights, Art 9, and the principle of exclusive cognisance. The consequences of not complying with the order of a committee are for Parliament to determine, and as the Dominic Cummings affair shows, is punishable by admonishment.[19]

28. In summary, the Draft Bill at clause 1 makes it 'an offence for an individual to fail without a reasonable excuse to comply with a summons'. When it comes to topical inquiries, there are two potential reasonable excuses.

    - (a) That the inquiry is outside the scope of SO No 152. The Draft Bill allows a court to 'consider the nature and purpose of the Committee's summons', and it seems likely that this encompasses the underlying inquiry to which the summons relates.

    - (b) That the inquiry is too soon and that the appropriate regulators are conducting ongoing investigations.

29. These two points could be addressed by amending SO No 152 to encompass topical inquiries. The Liaison Committee has already recommended amending the standing order to include '*matters of public concern falling within the area of competence of*

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[16] *Digital, Culture, Media and Sport Committee*, *Combatting Doping in Sport* (n 12) [20]; WADA, 'The Independent Commission – Report #2 (WADA, 2016) 78.

[17] *Digital, Culture, Media and Sport Committee*, *Combatting Doping in Sport* (n 12) [45]; IAAF Ethics Board, 'Notice of Closure of Investigation' (11 April 2019) 3, accessed at [https://www.worldathletics.org/download/download?filename=fec1f830-9f90-4105-8c39-9d33a95f20f2.pdf&urlslug=Ethics%20Board%20–%20Notice%20of%20Closure%20of%20Investigation%20–%2011%20April%202019]. The email to which IAAF Ethics Board refers is available at [https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Evidence/Michael-Bellof-Sebastian-Coe-emails-re-David-Bedford-allegations-August-2014.pdf].

[18] See also *Erskine May*, para 38.11.

[19] House of Commons Committee of Privileges, *Conduct of Mr Dominic Cummings* (HC 2017-19, 1490).

those departments and bodies'.[20] To date, this amendment has not been made. If proceeded with, the Draft Bill makes this amendment all the more necessary.

30. At this point, it is worth considering the value of topical inquiries, as once clearly included within the standing order, committees may be tempted to undertake such inquiries more regularly. Most obviously, there is a risk that a committee's attention is diverted away from its core task of scrutinising their respective department. However, as I explain in my research, the one thread linking these four examples is that they took place within a self-regulatory context. With *BHS* and *Sports Direct,* the alleged wrongdoing took place within the context of private companies, owned by a majority shareholder who effectively ran the company, while *Combatting Doping in Sport* and *Phone-Hacking* involved private individuals or companies subject to forms of self-regulation either through the WADA Anti-doping Code, or the Press Complaints Commission. Particularly with *Phone-Hacking* and *Sports Direct*, these self-regulation processes had fallen short[21] or did not provide the ability to consider all the allegations in the round.[22] By contrast, with *BHS* and *Combatting Doping in Sport*, it is less clear what was achieved, as this accountability gap is less apparent. The Pensions Regulator (and others) investigated Sir Philip Green, and an independent commission established by WADA scrutinised the IAAF's actions.

31. Consequently, there is value in committees having a residual jurisdiction to conduct an *ad hoc* topical inquiry, and so, SO No 152 should be amended as suggested by the Liaison Committee (regardless of whether the Draft Bill is proceeded with or not). Whether to undertake a topical inquiry could be left to committees to decide for themselves, mindful of when they are likely to be most effective, such as when an accountability gap arises, as indicated in the previous paragraph. Alternatively, the decision could be subject to a filtering mechanism, such as requiring the Speaker's approval or the House as a whole by resolution.

Potential Consequences of Not Amending SO No 152 and Proceeding with the Draft Bill

32. If SO No 152 is not amended, and the Draft Bill is proceeded with, then there is an increasing risk that a topical inquiry could trigger a challenge on human rights grounds. This Committee is already well-versed on the need to adopt procedures that comply with the legal standards of fairness to comply with Art 6 ECHR. However, topical inquiries are conducted in circumstances where a committee knows that its conclusions can damage a witness's reputation. This means that Art 8 ECHR becomes relevant, as reputation is protected as part of the right to respect for private life.[23] *A v UK* shows

[20] House of Commons Liaison Committee, *The effectiveness and influence of the select committee system* (HC 2017-19, 1860) [18].

[21] With *Phone Hacking*, the Press Complaints Commission and the police had all fallen short of what was expected of them, or what the needed to have delivered.

[22] With *Sports Direct*, the Health and Safety Executive could not have considered the allegation that workers were being paid less than the minimum wage, which was part and parcel of the allegation of poor employment conditions.

[23] See European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights' (31st December 2020) [163]-[179] and the caselaw cited therein. In addition, it is an open question as to whether Article 8 ECHR extends to protect the reputation of a company, *Firma EDV für Sie, EfS Elektronische*

that, in principle, parliamentary privilege is subject to the proportionality tests under both Arts 6 & 8 ECHR.[24]

33. In *A v UK*, a statement made by an MP that damaged an individual's reputation was clearly said within the context of an orderly debate in the chamber. If SO No 152 is not amended, then the same cannot be said for a topical inquiry, where a committee's conclusions damage the reputation of a witness. Although the margin of appreciation is likely to remain broad, the proportionality test under Art 8 ECHR could be more intensive than that provided under Art 6 ECHR, given that substantive, rather than procedural, rights are at stake. Although formalistic, there is a ready-made, less restrictive alternative, which is that a committee acts within the standing orders that provide for its creation and remit.

34. Committee procedure remains highly relevant to a challenge under Art 8 ECHR, perhaps even more so, given that the fairer the process, the more likely any proportionality test will be met. Topical inquiries could apply aspects of the procedure undertaken by the Privileges Committee when investigating the complaints of contempt made against Colin Myler, Tom Crone, Les Hinton, and News International. The Committee took oral evidence under oath and allowed a legal or other advisor to accompany witnesses. More importantly, for Art 8 ECHR purposes, witnesses received a warning letter if the committee was minded to criticise them in their report.[25] This right to reply is an essential ingredient for fairness and provides the public with the opportunity to make up their own mind.

35. Indeed, this provides the example that Parliament has already decided that enhanced procedures were necessary to determine whether witnesses should be admonished. The sole effect (if indeed there is one) of an admonishment is to damage the recipient's reputation.[26] Therefore, if, in a topical inquiry, a necessary consequence of seeking to hold an individual to account morally is to damage someone's reputation, it is difficult to see why lesser procedures will suffice.

36. As this Committee suggests, any new procedures could be outlined in the Standing Orders or by resolution of the House.[27] These procedures could be made at the committee's disposal when obtaining the Speaker's or the House's approval to proceed with a topical inquiry as suggested above at paragraph 31. Otherwise, committees continue to operate as they do presently, with the vast majority of inquiries undertaken without difficulty.

Consequences for Giving Evidence

Datenverarbeitung Dienstleistungs GmbH v Germany, App no 3278/08, 2nd September 2014.

[24] App no 35373/97, 17th December 2002.

[25] House of Commons Committee of Privileges, *Conduct of Witnesses Before a Select Committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton and News International* (HC 2016-17, 662) 135.

[26] See for example, David Liddington, then Leader of the House, who stated that being found to have ''having a committed a contempt of Parliament … can cause reputational damage to the individual and also cause commercial damage to the organisations they represent', HC Deb, 27 October 2016, vol 616, col 985.

[27] House of Commons Committee of Privileges, *Select committees and contempts: clarifying and strengthening powers to call for persons, papers and records* (n 2) 134.

37. Another issue is the situation that some witnesses may find themselves in, given that the Draft Bill effectively compels them to give evidence. Erskine May suggests that witnesses are required to answer all questions asked by a committee, regardless of the risk of self-incrimination, potential civil action, or breach of legal professional privilege.[28] Underpinning this approach is that witnesses are protected by Article 9 for the evidence they give to a committee.[29] In addition, *Makudi v Triesman*[30] is clear that this protection can extend to a repetition outside Parliament of evidence given in Parliament when it is in the public interest. It is relatively easy to imagine in topical inquiries circumstances when perhaps 'whistle-blower' may be required to repeat statements made to a committee before an external regulator or under an accountability procedure.

38. However, this does not necessarily protect witnesses from punishment as a result of giving evidence, a risk that is perhaps all the greater in the private sector and in circumstances that may give rise to a topical inquiry. The Children and Family Courts Advisory and Support Service (CAFCASS) case is an instructive example. The Lord Chancellor removed a board member due to evidence they gave before a committee. The Lord Chancellor and officials who investigated the matter were found by the Standards and Privileges Committee to be guilty of contempt of Parliament.[31] This showed how even within the public sector, there was a 'widespread ignorance of the principle of Article 9 (even on the part of a legally qualified Lord Chancellor)',[32] and such risks are greater in the private sector. Witnesses are only protected to the extent that Parliament is willing to enforce and protect its privileges. In practice, the only tool available to Parliament itself is an admonishment, which is likely to carry less weight in the private, than in the public, sector.

39. Theoretically, some protection is offered by the Witness (Public Inquiries) Protection Act 1892, which at section 2, provides that anyone who 'punishes, damnifies, or injures' any person for giving evidence to an inquiry is guilty of an offence, punishable with a maximum fine of £100 or imprisonment of a maximum of three months. However, there is no record of any prosecution under the 1892 Act,[33] and these punishments are less severe than the Draft Bill provides for non-compliance with a summons.

40. Consequently, there is a genuine risk that the Draft Bill forces witnesses to give evidence regardless of the consequences, only for Parliament to lack the practical tools required to protect those witnesses. This is a particular concern when a witness may be revealing wrongdoing or disclosing the actions of the powerful or influential.

Misleading a Committee and Evidence Under Oath

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[28] *Erskine May,* para 38.36.
[29] See *Prebble v Television New Zealand* [1995] 1 AC 321.
[30] [2014] EWCA Civ 179
[31] Committee on Standards and Privileges, *Privilege: Protection of a Witness* (HC 2003-04 447).
[32] Oonagh Gay and Hugh Tomlinson, 'Privilege and Freedom of Speech' in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart 2013) 35, 44-45.
[33] Section 1 of the 1892 Act makes clear that 'inquiry' for the purpose of the Act includes an inquiry held by any committee of either House of Parliament.

41. If witnesses are effectively forced to give evidence, then there may be a temptation to give misleading or false evidence. However, on the face of it, the Draft Bill creates the anomaly that misleading evidence given to a committee can only be punished by admonishment, whereas ultimately, non-attendance could be punished by a fine or imprisonment.

42. More accurately, the position is that evidence not given under oath is punishable by admonishment. The fallout from *Phone-hacking* provides a recent example of this. The vast majority of evidence given to committees is not under oath, and generally, it would be unnecessary for it to be so.

43. However, committees do enjoy the power to receive evidence under oath. Intuitively, given their fact-finding nature, this is more appropriate for topical inquiries. The Parliamentary Witnesses Oaths Act 1871, section 1, gives committees the power to administer an oath to witnesses. The standing orders reflect this at various points.

44. Generally, false evidence given under oath is punishable under the Perjury Act 1911. Erskine May states that the 1911 Act does apply to witnesses before committees.[34] However, the position may not be so clear. Section 1 applies to 'any person lawfully sworn as a witness' before a 'judicial proceeding'. A 'judicial proceeding' is defined as any 'court, tribunal, or person having *by law* power to hear, receive, and examine evidence on oath'. Section 2 applies to any person 'being required or authorised *by law* to make any statement on oath for any purpose, other than in a judicial proceeding'.

45. As Street and Gordon argue, it is at best unclear as to whether committees 'by law' have the power to hear evidence under oath. The 1871 Act gives committees the power to administer an oath to a witness, but this may not be the same as having the power to receive evidence under oath. It is difficult to argue that the 1871 Act is the source of the committee's powers to receive evidence; that more obviously stems from the standing orders, as part of the law and custom of Parliament rather than the ordinary law.

46. The contrary argument is that the 1871 Act clarifies that as a matter of the ordinary law (not the law and custom of Parliament), committees have the power to receive evidence under oath and that the Perjury Act 1911 applies to such evidence. Otherwise, the 1871 Act is largely superfluous, as it provides a power that is already in the gift of Parliament to provide to its committees via the standing orders. However, the drafting difficulties of the relationship between the 1871 Act and the 1911 Act remain and should be clarified.

47. It would seem that, given the close conceptual connection between attendance of witnesses and the veracity of their evidence, it would be logical for the position to be made clear that false or misleading evidence under oath could be punished similarly to refusing to answer a summons. To tie these two matters together, taking evidence under oath could be part of a committee's request to the Speaker or the House for their permission to undertake a topical inquiry in the first place or when requesting the issue of a summons.

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[34] *Erskine May*, para 38.37.

Conclusion

48. Overall, the Draft Bill does solve the problem of reluctant witnesses. Nevertheless, it is debatable whether the problem is sufficient to need resolving in the first place. This is especially so when by resolving one problem, the Draft Bill may create others, which are most likely to arise with topical inquiries on the rare, but important occasions they are undertaken. Resolving these problems requires legislation that goes considerably further than the Draft Bill. This, in turn, questions the wisdom of proceeding with the Draft Bill, at least for now.

49. Should the problem for reluctant witnesses become more commonplace, and obstructs committees from fulfilling their constitutional function, then the Draft Bill provides a template for the solution.

8 June 2021