

Written evidence submitted by the Justice Committee

Thank you for inviting us to respond to your Committee's recent report on select committees and contempts and the powers to call for persons, papers and records. The letter you sent to the Members of the Liaison Committee was circulated to my Committee and considered at our last meeting.

Whilst we have not had the time to consider the Committee's proposals in depth or respond to the consultation questions at length we do recognise the importance of the matter for Parliament and the need to address the issue in order to ensure the ongoing success of the select committee system. Furthermore, as the Justice Committee, considering the significant implications of your proposal, especially regarding Parliament's relationship with the courts, we feel obliged to provide some thoughts for consideration during the next stage of your inquiry.

- 1. The current situation is unsatisfactory, but the solution must be proportionate.** We recognise there is a considerable problem if witnesses refuse to obey summons issued by select committees using their existing powers to call for persons, papers and records. These powers are useful to ensure committees receive the evidence they need to conduct full and effective scrutiny in the interests of the public that we serve. However, while we note that there have been high profile incidents in recent years of such refusals (the Justice Committee has not itself experienced this issue), the proportion is very small. Any proposal from the Committee should therefore be proportionate to the scale of the problem and must not unduly hinder the work of select committees.
- 2. Select committees are not and should not be considered as a court of law.** Select committees play an essential role in our parliamentary democracy holding the government to account and interrogating issues that matter to the public to provide constructive solutions and effective scrutiny. They operate in a political environment and serve a very different purpose to judicial hearings (however ostensibly similar they might appear at times to the public). Our select committee system benefits from being able to establish inquiries at pace and by not being bound by the same rules of procedure as apply in the courts, but rather by Standing Orders that are determined and set by Members of the House.
- 3. Clarity is a virtue of the rule of law.** That said, as the Justice Committee is very aware, clarity is a virtue of any system of rules. The current extent of the powers of the House in relation to contempt is unclear, and powers should not be utilised, and certainly not enforced, where there is uncertainty as to the extent of their force or operation. The present lack of clarity presents significant risks for the House, for Members, witnesses and the House alike, as has been demonstrated in recent years. The Committee therefore recognises this virtue of your proposal were the House to agree that new powers to enforce a summons are proportionate and necessary.

4. **Legislative proposals need to be very carefully evaluated.** The Committee's legislative proposal raises a number of important Rule of Law issues which need to be carefully evaluated. The provisions in the draft Bill would provide both the House and those asked to give evidence a better understanding of the legal rights and obligations arising from the request. As you acknowledge, they would necessarily require the Courts to exercise some jurisdiction over the use of any powers, which would constitute a significant incursion into the protections afforded by Article IX of the Bill of Rights 1689. The fact that the courts would have to consider whether an individual had a "reasonable excuse" for a refusal to attend would provide the courts with difficult choices which would likely attract political criticisms. However, we recognise that political criticism of the judgments of courts is not unusual and is not necessarily a reason for not granting them a role in an important constitutional process.
5. **The House should proceed with proposals to ensure fair treatment of witnesses before Committees.** In relation to the proposal that any legislation be accompanied by principles-based guidance for fair treatment of witnesses, that is a progressive step which we support. It would both protect the rights of individual witnesses and help to protect the House's reputation. It would also be essential to satisfy Members, the public and the courts that the combination of any legislation and the House's own procedures demonstrated the modern standards of fairness expected. We agree with your view that, in the absence of any immediate forthcoming legislation in this area, the House should proceed with clarifying the rules for witnesses appearing before committees.

We hope these considerations are helpful in the next stage of your inquiry and are grateful for being provided the opportunity to respond.

Sir Robert Neill MP

Chair
Justice Committee

10 June 2021