

**Written evidence submitted by Lord McFall of Alcluith, Senior Deputy Speaker,  
House of Lords (SCC0006)**

Thank you for your letter of 7 March inviting the House of Lords Committee for Privileges and Conduct to submit evidence to your inquiry into the exercise and enforcement of the powers of the House in relation to select committees and contempts.

You specifically asked about the experience of select committees in the Lords with regard to cooperation from witnesses and sanctions for non-compliance. In recent years House of Lords committees have mostly encountered significant problems only with witnesses representing the Treasury. In the 2013-14 session the Personal Tax Services Committee asked for evidence from the Exchequer Secretary to the Treasury but he declined to attend and to allow Treasury officials to appear. In 2014-15 the Affordable Childcare Committee was also unable to secure evidence from Treasury officials or ministers. Both committees set out the issues in their reports. In response to these problems the then Chairman of the House of Lords Liaison Committee met the then Permanent Secretary of the Treasury, Sir Nicholas Macpherson (now Lord Macpherson of Earls Court). The conclusion of that discussion was included in two Liaison Committee reports:

"Treasury ministers and officials with named responsibilities in policy areas relevant to House of Lords Select Committee inquiries should be prepared to give evidence to those inquiries, and to other inquiries where there is an overriding Treasury interest, subject to such requests being made in good time." (Liaison Committee, 2nd report, 2014-15; repeated in Liaison Committee, 1st report, 2015-16.)

Since then House of Lords committees have not encountered difficulties when inviting officials to give evidence on behalf of the Treasury. Neither have there been other cases of high profile witnesses ultimately refusing to give evidence to a committee. While witnesses are sometimes reluctant to attend we have been able to resolve the situation behind the scenes.

The memorandum you received from the Clerk of the House of Commons sets out the options identified by the 2013 Joint Committee on Parliamentary Privilege for addressing the perceived inability of the two Houses to exercise their penal powers:

- To do nothing;
- To reassert the House's existing powers by amending Standing Orders or by Resolution; or
- To legislate to provide a statutory regime, whether administered by Parliament or the courts.

I am sceptical of the value in seeking to develop an enforcement mechanism to address the perceived inability of the House to exercise its penal powers. First, in this House we have found that the threat of "naming and shaming" a non-cooperative witness has tended to be enough to ensure attendance, subject to the issues set out above relating to the Treasury. Secondly, there is the potential for reputational damage if Parliament tries to assert its penal powers. Thirdly, any move to develop an enforcement mechanism would risk the involvement of the courts in interpreting parliamentary proceedings and that would lead to the risks already identified in the memorandum you have received from your Clerk.

I have consulted the other members of the Committee for Privileges and Conduct on the contents of this letter. If you decide to recommend changes to the House of Commons approach to the exercise and enforcement of the powers of the House then we would of course appreciate early warning of your recommendations, which we would consider carefully in this House.

*April 2017*