Response to Consultation on parliamentary privilege

John Hemming MP

Q1 – I agree that the case has not been made out for a codification of parliamentary privilege. The main use of privilege is to protect citizens from the abuse of power. I believe that parliament should be more assertive in terms of protecting citizens. I have, for example, a case of a constituent who has been imprisoned through what I see as the wrongful use of mental capacity legislation, but I am banned from meeting her. We should be willing to assert privilege to stop her being held incommunicado.

Privilege will always be subject to a joint determination by the courts and parliament. Parliament needs to assert itself further, but there will always be this tension in the constitution.

Q2 – I don’t think there is any need to define proceedings in parliament in statute

Q3 – There are problems with members correspondence. Private correspondence would not be protected from contempt of court proceedings unless linked to parliamentary proceedings. I think protection for private correspondence should be extended to enable MPs to write to regulatory authorities without first having to raise issues in public proceedings.

Q4 – place out of parliament does not need definition.

Q5 – I think Pepper v Hart already has moved in the right direction.

Q6 – This is an area where it remains important to protect the citizens right for their MP to speak out about issues without the threat of punishment for the MP. Hence it is difficult to work out useful legislative changes which would not restrict the freedom of speech.

Q7 – see Q6

Q8 – it is dangerous to encroach upon the protection of privilege for information offences. The key role of privilege is in the realm of information. If anything it should be made clear that providing information to MPs is protected by privilege even if not connected to proceedings. The key whistleblowing function of politics would be the priority here and must be protected.

Q9

Q10 – privilege protects parliamentarians from the courts, it does not protect parliamentarians from action by the privileges committee. It is best to keep the courts out of parliament.

Q11 - the key accountability of elected officials is to the electorate and in the mean time the parliamentary standards or privileges committees. Bringing in the criminal law as happened with Damien Green is a step which undermines democracy.

Q12 – It would be sensible to have some parliamentary check on the issue.
Q13 – It is important to identify some cases where there is a mischief that needs to be dealt with in practise before proposing legislative change. That threshold has not been met.

Q14 – It is important to protect whistleblowers.

Q15 S1 (1) in essence undermines freedom of speech in parliament and brings the courts in to adjudicating what MPs can or can not say. Hence it should not come into law.

Q16 – I agree that there is no need to restrict freedom of speech in proceedings in Parliament in respect of court injunctions.

Q17 – I would leave S13 of the Defamation Act. It does give a potential route through which the issues raised in the earlier questions could be resolved.

Q18 - The power would have to rest with the member making the statements, not the house as a whole. Otherwise it could be used as a tool of political oppression.

Q19 – Any power to waive privilege has to rest with the individual members who are affected by the waiver.

Q20 – There is a need to strengthen Article 5 of the Bill of Rights in terms of the citizens right to petition the state. Otherwise, however, there is no need for legislation to clarify the extent of parliament’s privilege to organise its internal affairs.

Q21 – I am not sure that legislation is needed as there have been members of parliamentary committees in the past that were not members of the house itself.

Q22 I agree that there is no need for legislation.

Q23 – I believe that parliament should assert the privileges it holds on behalf of citizens.

Q24 – I think that there does need to be a bit of judicialisation of the constitutional court procedures inherent in the privileges committee. Having a power to fine may help, but that is probably present through assertion. The power to imprison has not been removed from the house and could simply be confirmed through assertion.

Q25 – I am of the view that it is best for parliament to enforce the contempt rules rather than the courts.

Q26 – This is best done through parliament.

Q27 – I think that the legislative changes would be helpful, but not necessary.

Q28

Q29-30 – It would be possible to undermine parliamentary democracy by requiring MPs to turn up in court to give evidence at times that conflict with parliamentary sessions. It is entirely possible if the law is changed to envisage a situation where this power would be used, particularly if there was a narrow majority.

Q31 – I don’t think there is that much of a problem with the issue of serving of documents as long as it does not undermine the security proceedings.
Q32 – I don’t see any reason why such a power should be retained.

Q33 – This probably does not need to remain.

**Summary**

Considerable damage to democracy could be done by restricting the ability of Members of Parliament to tell the truth about what is happening to those that they represent. This can be done unintentionally by bringing in legislation. We also need to be cautious about giving the power collectively to parliament to remove the protection from a single parliamentarian. This power could be abused.

Much of the problems identified by the paper do not occur in practise. The changes to the provisions in respect of the publishing of parliamentary proceedings are minor and not really necessary. I think better protection needs to be given to whistle blowers.

However, it appears that the only proposals the government are interested in promoting are essentially ones which tend to undermine representative democracy. Hence it would be best not to bring forward any legislation.