

CONSULTATION PAPER ON PARLIAMENTARY PRIVILEGE

RESPONSE BY THE CROWN PROSECUTION SERVICE

Introduction

This paper sets out the response of the Crown Prosecution Service (CPS) to the Parliamentary Privilege consultation.

General Comment

We have only responded to questions 6-15 in Part One, Section Three (Freedom of speech and criminality) and questions 26 and 30, as these are the most relevant to the CPS.

Responses

Q6. Do you believe that that protection of privilege should be disapplied in cases of alleged criminality to enable the use of proceedings in Parliament as evidence?

Whether or not to disapply the protection of privilege in cases of alleged criminality is a matter for Parliament. As pointed out in the consultation paper, it is likely that there will be a limited number of cases in which it will be necessary to adduce such evidence, but we note that allowing the use of this evidence by the prosecution may assist individuals in relevant cases being brought to justice whereas if the protection of privilege applied this may not be possible.

Q7. If so, do you believe that this disapplication should apply to all cases of alleged criminality unless specifically excepted, or should disapplication be restricted to certain specific offences such as bribery?

We do not have a view on whether any disapplication should apply to all cases of alleged criminality (with exceptions) or if it should be restricted to specified offences, as this is a matter for Parliament. We note, however, that whichever option is adopted, it should be clear as to which offences the disapplication of the privilege applies.

Q8. Do you agree that if the protection of privilege were disapplied in criminal cases, exceptions would need to be made?

It is not for the CPS to say whether the predicted 'chilling effect' which may limit the freedom of speech of Members and have a negative effect on the frank deliberations of Parliament (paragraph 116 of the consultation paper) would occur in practice. If it is determined that some offences should be excluded from the disapplication of Parliamentary privilege, then we are of the view that the exceptions should be limited to 'speech offences' (as described in paragraph 119 of the consultation paper) which may occur during the course of general debate.

Q9. If so, are the offences specified in the draft Schedule the correct ones? If not, which offences should be included or excluded?

We are of the view that behaviour or comment which specifically relates to an offence such as conspiring or soliciting to commit murder should not be subject to privilege, as opposed to behaviour or comment about such offences as part of a general or theoretical discussion or debate. Similar questions arise in relation to the Public Order and Terrorism Act offences which are included in the list of exempted offences in the consultation paper.

We are not entirely clear as to why such offences are classified as a 'speech offences' or why the desire to protect free speech within Parliament need extend to the commission of specific criminal acts such as these. We are of the view that if the offences were removed from the exemption list, the DPP consent safeguard as well as consideration of the public interest of prosecuting such an offence under the Code for Crown Prosecutors will provide sufficient safeguards to allay concerns that Members would be prosecuted for speaking about such offences or acts in general terms.

Q10. Should the protection of privilege be disapplied where a person incites specific acts of violence or terrorism in proceedings in Parliament? While the list of offences to be exempted from any disapplication of the privilege is a matter for Parliament, we do not agree that a Member who directly incites or encourages a specific criminal act, rather than just speaking about the concepts in general or abstract terms as part of a debate, should be exempt from the disapplication of the privilege.

Q11. Do you agree that the offence of misconduct in public office should be on the list of exceptions? Whether the offence of misconduct in public office should be on the list of exceptions is a matter for Parliament. However, as we have noted above, in our view the exceptions should be limited to 'speech offences' (as described in paragraph 119 of the consultation paper) which may occur during the course of general debate.

Q12. Do you believe that, if the protection of privilege were disapplied in certain circumstances, a safeguard would be desirable before proceedings in Parliament could be used in evidence by the prosecution in specific cases?

Q13. If so, do you support the approach in the draft clauses?

We agree with the inclusion of the DPP consent safeguard and the wording of the draft clauses. We are grateful for the opportunity to be involved in the drafting of those clauses and would appreciate being involved in any redrafting that may be undertaken as a result of the consultation.

Q14. Do you believe the protection of privilege should in certain circumstances be disapplied for non-members as well as for Members?

Q15. If so, do you believe this should be:

- a) in all the same situations as for Members' or
- b) only when a non-member is being tried on the same facts as a Member?

While these matters are for Parliament to determine, we note that it seems inconsistent for the disapplication of Parliamentary privilege not to apply to non-Members as it would to Members. If appropriate, the DPP consent safeguard could perhaps be applied to non-Members as it is currently proposed to apply to Members.

Q26. Do you think a criminal offence should be introduced of failing to comply with an order of a select committee? If so, how should the issues identified in this paper be addressed?

While it is for Parliament to decide whether failing to comply with an order of a select committee should be a criminal offence, if the offence is to be created, we would appreciate being involved in the drafting and framing of this offence (assuming that it would be the CPS which would prosecute the offence). We would also recommend that an impact assessment be carried out to determine how often such an offence might be used.

If the offence were to be created, and the CPS were to be the prosecuting authority, we would oppose the proposal to introduce a 'safeguard' requiring the relevant House of Parliament to pass a resolution to consent to a prosecution of an individual for a select committee offence. Such a step would infringe upon the independent decision-making of the prosecution service under the Code for Crown Prosecutors and as such we would strongly resist it. We also note that the consultation paper realises the risk of prejudicing any subsequent trial as a result of comment made during any debate on giving consent for a prosecution.

Q30. Is there a continuing case for Members' exemption from attending a court as a witness?

For the reasons set out in paragraph 323 of the consultation paper, we do not believe that there is a continuing case for Members' exemption from attending court as a witness. Removal of this exemption would assist in the appropriate bringing to justice of further offenders in a small number of cases.

**Crown Prosecution Service
September 2012**