

## Parliamentary Privilege – Consultation

1. This is the response of the Press Association, the national news agency of Great Britain and Ireland, to the consultation paper on Parliamentary Privilege (CM 8318).
2. The Press Association provides a 24-hour-a-day, 365-day a year news service for national and regional newspapers, and radio and television broadcasters, as well as internet service providers across the UK and Ireland.
3. It also maintains a permanent staff at Parliament, and covers debates in both Houses, as well as sittings of select committees and other proceedings.
4. The Press Association's interest in the consultation is restricted to the matters covered in Chapter 8 of the paper, on Reporting of Parliamentary proceedings. It does not intend to comment on the other issues covered in the paper in relation to privilege for MPs and Peers and in relation to Parliamentary proceedings themselves.
5. The paper poses two questions relating to Chapter 8:  
Q27: Do you support the changes to the law which would be made by clauses 1 and 2? Q28: Do you believe other changes should be made to the law on reporting of parliamentary proceedings? If so, what changes do you believe should be made?
6. As far as Q27 is concerned, the Press Association believes the changes to the law which would be made by Clauses 1 and 2 do not go far enough. An accurate report of Parliamentary proceedings should be protected from an action for defamation by absolute privilege, rather than qualified privilege. This would have the effect of removing the "malice" element from the equation.
7. The Press Association believes that it would be extremely difficult, if not impossible, for any would-be claimant in a defamation case to demonstrate that any news organisation covering Parliamentary proceedings had published a report "with malice". Coverage of Parliamentary proceedings is a matter of the highest public interest, and, as far as the Press Association is concerned, a matter of duty. The issue of any malicious motive does not arise in the compilation of its reports or the selection of which proceedings will or will not be reported, and, as far as the Press Association is aware, does not arise in relation to any other news organisation which covers Parliamentary business. If the protection from a defamation action were to be absolute privilege, the question of malice would become irrelevant, making the media's position in relating to reporting Parliament clearer and simpler, and putting it on a par with reporting of proceedings in the courts.
8. As far as Q28 is concerned, the Press Association believes that the legal protection for reports of Parliamentary proceedings should be widened and

clarified. The possibility of a defamation action is only one of the risks which the media might face.

9. Questions have arisen in recent months and years over the position of the media when it reports, for example, information given in the House of Commons about an individual who has obtained an anonymised injunction intended to protect his or her privacy, as this could lead to the question of whether reporting of such statements would leave the media organisation open to proceedings for contempt of court.
10. The law should be amended and clarified to make clear that reporting of anything said during Parliamentary proceedings is beyond the reach of any action for contempt.
11. But this protection should go further, to exempt media reports from any liability for a breach of the criminal law in relation to such a report. A clear example, which arose in October and November 2006, is that relating to the anonymity given to the victims and alleged victims of rape and all other sexual offences.
12. Lord Campbell-Savours raised the issue on October 19, 2006, when he named a woman he said was "a serial and repeated liar" who had made false claims of rape and other sexual assaults against a number of innocent men. News organisations deleted the woman's name from their coverage of the debate because they believed that the qualified privilege they have for covering Parliamentary proceedings protected them only against being sued for repeating defamatory remarks by Peers or MPs, but would not protect them from a criminal prosecution under the Sexual Offences (Amendment) Act 1992.
13. The then Attorney General, Lord Goldsmith QC, confused the issue somewhat on November 20, 2006, when he told the House of Lords that Parliamentary privilege did not protect a journalist's "own note" of a debate in either House, where the words being reported would - if they had been said outside Parliament - have been against the law. Lord Goldsmith added: "The media has by statute protection from any criminal proceedings if it publishes an extract or abstract from an officially-approved record of Parliamentary proceedings - which means Hansard or the Parliament Channel - provided it publishes in good faith and without malice."
14. The Press Association believes that Lord Campbell-Savours would not have faced criminal proceedings had he named the woman outside Parliament and without the protection of Parliamentary privilege, because the relevant statute applies specifically to written and broadcast publications.
15. Section 1 of the Sexual Offences (Amendment) Act 1992 makes it an offence, punishable on summary conviction by a fine of up to £5,000, to include in "a written publication available to the public" or "a relevant programme for reception in England and Wales" material likely to lead members of the public to identify the victim of an alleged or actual sexual offence. The reality is that the

victim or alleged victim is named in open court during any criminal proceedings but that the onus on ensuring that she or he remains anonymous is on the media organisations which report those proceedings, or which cover an investigation into an alleged sexual offence or other events prior to and after any trial, if there is a trial.

16. The Press Association believes that this example demonstrates why, if Parliamentary privilege and freedom of speech for MPs and Peers are to fulfil their proper purpose, the media which cover those proceedings should be able to report them not only without fear of being sued for defamation, or accused of contempt of court, but also without running the risk of criminal liability for reporting something which, were the speaker outside Parliament, would clearly lead to a breach of some statutory restriction on publication.
17. The privilege should not be tied to whether something has appeared in Hansard or has been broadcast on Parliament TV. Hansard is an edited record, with MPs and Peers able to make corrections, and editorial decisions being made about phrasing, punctuation and so on, so that what it contains might not be an exact reflection of what was in fact said. The first version also appears online a minimum of two hours after the event, meaning that tying the privilege to it builds in an unjustifiable minimum delay to news reporting of events in the national legislature. In addition there is always the probability that on occasion what appears in Hansard will not match what was actually broadcast on Parliament TV, which is transmitted live, or what is on the audio recordings made of proceedings, against which journalists may sometimes check their notes to ensure accuracy. The absolute privilege should rather be accorded to any report which can be shown to be accurate, even if the report does not exactly mirror what subsequently appears in Hansard.

Submitted on behalf of the Press Association  
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