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Recent developments in the relationship between the UK Parliament and the courts

Sarah Davies, Clerk Assistant, House of Commons, UK Parliament

Chloe Mawson, Clerk Assistant, House of Lords, UK Parliament

Context

- ❖ **The UK has no codified constitution**
- ❖ **There is no notion of individual immunity of Members or staff in the UK Parliament**
- ❖ **In the UK Parliament, 'privilege', means protection of matters inherently for Parliament to decide**



The development of the principles of privilege



- 1689 Bill of Rights, Article IX, and 1840 Parliamentary Papers Act

- By the end of the 19th century, four main principles of privilege were established:
 - 1) parliamentary privilege exists and is exercisable by each House
 - 2) each House controls its own procedures
 - 3) the courts determine the boundaries
 - 4) the remedy for disagreement is legislation

- The Sub-Judice resolution

- The balance between the above four principles of privilege and sub-judice is covered in detail in the latest edition of Erskine May

Three cases from 2025 demonstrate recent developments in the relationship between the UK Parliament and the courts

- **ECHR judgement – April 2025**
- **Two Referrals to the Committee of Privileges in the summer of 2025**
- **Legal action against the Government by private schools challenging the introduction of VAT on fees**

ECHR judgement - April 2025

An individual was named in the UK House of Lords as the figure behind an injunction against a newspaper



He complained to the ECHR that this infringed his human rights under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms



The ECHR concluded in Parliament's favour



House of Commons



Key points in the ECHR's judgement, regarding the UK Parliament's work to keep privilege under review

- ❖ It is for national parliaments to assess the need to restrict conduct by their Members
- ❖ The UK Parliament is aware of the problem of privilege being used to frustrate injunctions
- ❖ The UK has addressed the need for further controls
- ❖ The ECHR "for the time being" leaves it to the UK Parliament to determine what controls might be necessary to prevent Members revealing information against a privacy injunction

ECHR judgement - continued

- ❖ However, the ECHR judgement notes that the disclosure of such information may have serious implications:
 - a) for the privacy of that individual
 - b) for the rule of law
 - c) for the separation of powers in the UK, if Parliament undermines an injunction granted by a judge

- ❖ The ECHR judgement stated that the UK Government must keep this issue under regular review (of parliamentary privilege being used in a way which undermines an injunction)

Referrals to the Committee of Privileges in the summer of 2025

The first referral



- ❖ The issue: access to unreported evidence from a parliamentary committee. Article IX of the 1689 Bill of Rights prohibits access to unreported evidence from a previous Parliament.



(Arising from a request to access evidence from a previous Northern Ireland Affairs Committee, to use that evidence in a statutory inquiry on the Omagh bombing of 1998)

- ❖ Outcome: the House of Commons (HoC) debated the problem and referred it to the Committee of Privileges, which will report its decisions to the HoC by 30th of October.

- ❖ This outcome was the result of extensive discussion between the inquiry team and relevant officials to reach an agreed mechanism to consider the question (of whether the transcript should be provided).

The second referral

The issue: a UK regulatory body (the Charity Commission) launched a legal case against the Parliamentary and Health Service Ombudsman (PHSO), trying to prevent the PHSO's report being laid before the House. The House authorities intervened as it was a matter of parliamentary privilege because the PHSO is effectively a part of Parliament (being overseen by a parliamentary select committee – the Public Administration and Constitutional Affairs Committee- PACAC).

The outcome: the House of Commons debated and passed a motion that:

- a) the PHSO's report **should** be laid before the House
- b) the Committee of Privileges will consider this attempt in the courts by the Charity Commission to prevent the laying of a report before the House

The Committee of Privileges will consider this matter this autumn.

Legal action against the Government by private schools challenging the introduction of VAT on fees



This concerned the House authorities because

- 1) the court entertained the claim before the Finance Act was passed
- 2) this legal challenge came to light late in the day

These points showed a lack of understanding of privilege by the lawyers involved in the case

- ❖ This same case then raised a new issue – the use of parliamentary reports in court
- ❖ This issue was dealt in 2020 by the UK Court of Appeal during the *Heathrow Hub case*. That judgement set out a six-point classification of the permitted use of parliamentary proceedings in court
- ❖ The outcome: the Court agreed with the House that if the findings of parliamentary reports are contested, they should not be admissible
- ❖ The case raised concerns with the HoC over how the case was conducted and especially the late involvement of Parliament
- ❖ This led to work with the Government legal department (described in the next slide)

Recent and current work by the House on issues of privilege

- There is an inquiry into sub-judice being carried out by the House of Commons Procedure Committee, which is covering five areas.
- A meeting was held between the Government Legal Department and Parliamentary Clerks to discuss the concerns over the increasing number of cases involving privilege and these issues being raised with the two Houses at a late stage. This meeting resulted in a number of actions to be taken, including more training for government lawyers, improved guidance and material alerting court users to parliamentary privilege, and more work through Parliamentary clerks (the civil servants in each Department who are responsible for relations with Parliament).