



House of Commons
Committee on
Standards and Privileges

**Privilege: Protection of
a Witness (Government
Response)**

Sixth Report of Session 2003–04

*Report and Appendix,
together with formal minutes*

*Ordered by The House of Commons
to be printed 14 September 2004*

Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

Rt Hon Sir George Young Bt MP (*Conservative, North West Hampshire*) (Chairman)
Mrs Angela Browning MP (*Conservative, Tiverton and Honiton*)
Ross Cranston QC MP (*Labour, Dudley North*)
Mr Andrew Dismore MP (*Labour, Hendon*)
Rt Hon Derek Foster MP (*Labour, Bishop Auckland*)
Mr David Heath CBE MP (*Liberal Democrat, Somerton and Frome*)
Rt Hon Andrew Mackay MP (*Conservative, Bracknell*)
Mr Kevin McNamara MP (*Labour, Hull North*)
Mr Stephen Pound MP (*Labour, Ealing North*)
Mr Simon Thomas MP (*Plaid Cymru, Ceredigion*)

Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: www.parliament.uk/sandp. A list of Reports of the Committee in the present Parliament can be found in this volume.

Committee staff

The current staff of the Committee are Dr Christopher Ward (Clerk), Ms Charlotte Littleboy (Second Clerk) and Lisa Hasell (Secretary).

Contacts

All correspondence should be addressed to The Clerk of the Committee on Standards and Privileges, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615.

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Privilege: Protection of a Witness (Government Response)

1. In its Fifth Report,¹ the Committee criticised the adequacy of the guidance on parliamentary privilege issued by departments both to Non-Departmental Public Bodies (NDPBs) and for internal use. It urged the Government to remedy the deficiencies as a matter of urgency, and to consult the House on the terms of any proposed new guidance.
2. On 8 July, the Permanent Secretary at the Department for Constitutional Affairs wrote to the Chairman enclosing a draft of a new section on evidence to select committees which the Government proposes to include in the Cabinet Office publication *Guidance on Codes of Practice for Board Members of Public Bodies*. The text of the correspondence is reproduced as an Appendix to this Report.
3. We are grateful to the Department for showing us the proposed guidance, which focuses specifically on the particular area where privilege issues arose in the case which led up to our Fifth Report. While responsibility for the scope and content of any guidance it issues to NDPBs on parliamentary privilege must rest with the Government, we welcome the proposed advice which, if followed, should avoid any risk of a recurrence of events similar to those which led to our Fifth Report.
4. We also look forward to seeing, in due course, the proposed new guidance to departments on the issue of parliamentary privilege.

¹ Fifth Report of Session 2003–04: *Privilege: Protection of Witness*, HC 447.

Appendix

Letter to the Chairman from the Permanent Secretary of the Department for Constitutional Affairs

I am writing to complete the Government's response to your Committee's Report: *Privilege: Protection of a Witness*, in April. As you know, the Government fully accepted the findings of the Committee's Report and, as you acknowledged, the Secretary of State has unreservedly apologised. The Government also accepts the Committee's conclusion that there is currently inadequate guidance on parliamentary privilege issued by departments for use by both Non-Departmental Public Bodies and for internal departmental use. Interim guidance was, as the Committee is aware, issued internally by the department when this gap in provision first became apparent during the Committee's inquiry.

I am now enclosing a draft of a new section to be included in the *Guidance on Codes of Practice for Board Members of Public Bodies* issued by the Cabinet Office, and would welcome the Committee's views on this before it is finalised. In addition, the Cabinet Office also plans to include similar guidance in its revised public appointments guidance to departments.

The Government is also currently reviewing the guidance on *Departmental Evidence and Response to Select Committees (Osmotherly rules)* and will ensure that the issue of parliamentary privilege is included as part of this.

8 July 2004

Sir Hayden Phillips GCB

Draft Guidance: Evidence to Select Committees

1. Departmental Select Committees have an important role in examining the expenditure, administration and policies of NDPBs. The Government fully supports this role. Lords Committees and other Committees may also seek evidence from NDPBs from time to time.
2. NDPB Board members may, on occasion, be invited to give evidence to Select Committees. When they do so, they should be as helpful as possible in providing accurate, truthful and full information refusing to provide information only when disclosure would not be in the public interest. This should be decided in accordance with the relevant statutes and the Government's Code of Practice on Access to Government Information (which will be superseded by Freedom of Information legislation from January 2005). Board members should bear in mind in this context the need to respect legitimate Board confidences.
3. Before giving evidence, Board members may find it helpful to see *Departmental Evidence and Response to Select Committees* (also known as the Osmotherly rules). This gives general advice on dealing with Select Committees including their powers to summon witnesses and papers and responses to Select Committee reports. Copies are available from the Propriety and Ethics team in the Cabinet Office on 020-7276-2474 or it can be accessed at <http://www.cabinet-office.gov.uk/central/1999/selcom/index.htm>.

4. Similarly, the Chief Executive of an NDPB may be called, as an Accounting Officer, to give evidence to the Public Accounts Committee (PAC). Guidance on evidence to the PAC is set out in the *Accounting Officer Memorandum* which can be obtained from the Treasury Officer of Accounts.

5. Board members wishing to give evidence should, as a matter of courtesy, advise their Chairman and colleagues on the NDPB Board and its sponsoring department of their intention. They should discuss with them the handling of any oral or written evidence they want to submit and whether they expect to be giving evidence on behalf of the NDPB or in a personal capacity. The Select Committee should be advised of the status of the witness.

6. Subject only to a Committee's power to decide to require the attendance of a witness, the decision on whether to give evidence is solely for the individual concerned. There must be no pressure placed on individuals to deter them, or action taken against them as a consequence of giving evidence to a Select Committee. Any such actions might be regarded as a contempt of the House, with potentially serious consequences for those involved.

July 2004

Formal minutes

Tuesday 14 September 2004

Members present:

Sir George Young, in the Chair

Mrs Angela Browning
Ross Cranston
Mr Derek Foster

Mr David Heath
Mr Andrew Mackay
Mr Simon Thomas

The Committee deliberated.

Draft Report [Privilege: Protection of a Witness (Government Response)], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

A Paper was ordered to be appended to the Report.

Ordered, That the Appendix to the Report be reported to the House.—(*The Chairman.*)

* * *

[Adjourned till Tuesday 12 October at 9.30 am.]

Reports from the Committee on Standards and Privileges in the current Parliament

Session 2003–04

First Report	Conduct of Mr George Galloway	HC 73
Second Report	Conduct of Ms Diane Abbott	HC 285
Third Report	Conduct of Mr John Spellar	HC 339
Fourth Report	Conduct of Mr Iain Duncan Smith	HC 476 I–III
Fifth Report	Privilege: Protection of a Witness	HC 447
Sixth Report	Privilege: Protection of a Witness (Government Response)	HC 1055

Session 2002–03

First Special Report	Standards of Conduct: Letters from the Committee on Standards in Public Life	HC 516
First Report	Complaint against Mr Nigel Griffiths	HC 195
Second Report	Eighth Report of the Committee on Standards in Public Life: "Standards of Conduct in the House of Commons"	HC 403
Third Report	Complaints against Mr Michael Trend	HC 435
Fourth Report	Complaints against Mr Henry McLeish	HC 946
Fifth Report	Complaints against Mr Clive Betts	HC 947
Sixth Report	Pay for Select Committee Chairmen	HC 1150
Seventh Report	Guidance for Chairmen and Members of Select Committees	HC 1292

Session 2001–02

First Report	Complaint against Mr Geoffrey Robinson: Supplementary Report	HC 297
Second Report	Complaint against Mr Roy Beggs	HC 319
Third Report	Complaint against Mr John Maxton	HC 320
Fourth Report	Restrictions on the Initiation of Parliamentary Proceedings: A Consultation Paper	HC 478
Fifth Report	Complaints against Mr Keith Vaz	HC 605 I–II
Sixth Report	Registration of Interests by Members who have not taken their seat	HC 624
Seventh Report	Complaints against Mr Nigel Griffiths	HC 625
Eighth Report	Complaints against Mr Archy Kirkwood	HC 755
Ninth Report	A new Code of Conduct and Guide to the Rules	HC 763
Tenth Report	Complaint against Mr Peter Brooke	HC 1147