

DISCIPLINARY AND PENAL POWERS OF THE HOUSE

HC Factsheets - General Series No 6

(Previously Factsheet 62)

*The House of Commons has always exercised the right to discipline offenders. This right has been established by precedent and accepted by the courts. It may well date from the time when the King, his parliament and courts, met together in the old Palace of Westminster. The Commons' ultimate power of discipline over one of its own Members is expulsion, thereby creating a vacancy and subsequent by-election in that Member's constituency. The House also has various powers - albeit rarely used nowadays - to punish strangers (ie non-Members) who offend it in some way. It is impossible for this **Factsheet** to cover every eventuality that may occur and supply an answer to what might happen in any given instance. It is however possible to show how the House has invoked its power in the past; this **Factsheet** gives a general overview of these powers. Contempt, in particular, has been viewed with differing degrees of severity over the years, and it is impossible to give guidance here as to how the House would react at any one time to an incident. The **Factsheet** is divided into three sections:*

Section A refers to Members

Section B refers to strangers

Section C provides definitions of contempt

SECTION A

MEMBERS: CALLS TO ORDER, RESUME SEAT OR LEAVE CHAMBER

"To the end that all the Debates in this House should be grave and orderly, as becomes so great an Assembly; and that all Interruptions should be prevented; Be it Ordered and Declared, That no Member of this House do presume to make any Noise or Disturbance, whilst any Member shall be orderly debating, or whilst any Bill, Order or other Matter, shall be in reading or opening: And, in case of such Noise or Disturbance, that Mr Speaker do call upon the Member, by Name, making such Disturbance: And that every such Person shall incur the Displeasure and Censure of the House."

HC Journal 22 January 1693

To participate in a debate or at question time, Members have to "catch the Speaker's eye". When they have done so, the occupant of the Chair will call on the Member to speak. During debates, Members should be heard without interruption, but can give way to another Member when they wish. They should not stray from the topic under discussion and are called to **order** by the Speaker should they do so. Should a Member disregard this warning, or persistently interrupt another Member, the Speaker may instruct that Member to resume his/her seat. Should this order be disobeyed, the Speaker may request the Member voluntarily to leave the Chamber for the remainder of that day's sitting - this

request is not governed by Standing Order; the Member may take part in Divisions and stay within the precincts of the House (throughout this *Factsheet*, *precincts* refers to all the buildings that comprise the Parliamentary Estate). Should a Member decline to comply with this request, the Speaker may invoke Standing Order No 43, which requires the Member to leave the House **and** its precincts for the remainder of that day's sitting. Persistent interruptions from a sedentary position, questioning a decision of the chair or refusal to withdraw an unparliamentary expression, have all in the past led to Members being asked to withdraw from the Chamber. It is for the Speaker to decide, with regard to the severity of the offence, what power to invoke. If a Member disregards the Speaker's order to leave, then he or she may be named under Standing Order No 44. It is the duty of the Serjeant at Arms to ensure the Member complies with the direction of the Speaker.

NAMING OF A MEMBER AND SUSPENSION (SO NO 43)

If a Member has disregarded the authority of the Chair, or has persistently and wilfully obstructed the House by abusing its rules, he or she (after generally being given every opportunity to set matters to rights) may be named. That is, the Speaker says "I name Mr William White (or whoever)". Thereupon, usually the Leader of the House, the Government Chief Whip, or the senior minister present, moves "that Mr William White be suspended from the service of the House". If the motion is agreed to, if necessary after a division, the Member is directed to withdraw, and suspension (for five sitting days for a first offence), follows. A second offence in the same Session will lead to suspension for 20 sitting days, and a third, to suspension for a period the House shall decide. Should a Member refuse to withdraw, and then resist removal by the Serjeant at Arms, suspension for the remainder of the Session ensues. Where the Member has been suspended from the service of the House under Standing Order No 44, salary is now forfeited during the period of suspension.

SUSPENSION ON A SPECIFIC MOTION

Following a debate on 6 November 1995, the House approved the setting up of the Standards and Privileges Select Committee (see below). On 24 July 1996, the House approved a Code of Conduct for Members (HC 633 1996/97, available on the internet at :

<http://www.parliament.the-stationery-office.co.uk/pa/cm199697/cmselect/cmstand/688/codefc.htm>

If the Committee considers the abuse of its rules to be serious, the Committee can recommend that a Member apologises to the House. The most recent occurrence of this was the Member for Brent East (Mr Ken Livingstone) who apologised for 'breaching the rules on registration of interests and not observing the principle of openness which then Code of Conduct requires'. The Committee can also recommend that a Member be suspended for a specific length of time. A Motion to this effect is put to the House, and may be debated. The Motion may also call for the suspension of salary for the same

period. Such a Motion has been moved on several occasions, a recent case regarded the Member for Billericay (Mrs Teresa Gorman) on 1 March 2000. In this instance, a period of suspension for one month was agreed to by the House, with suspension of salary.

Although suspended, if already nominated, a Member may continue to serve only on a committee for the consideration of a Private Bill. Other than for this purpose, the Member may not enter the Parliamentary Estate for the duration of the suspension.

OFFENCES IN COMMITTEE

The Chairman of a Standing or Select Committee does not have the authority either to order a Member from a sitting, or of naming a member. In such an instance, the Chairman will move to suspend forthwith the proceedings of the Committee and report to the House. The Speaker then deals with the offence as if it had occurred in the House itself.

If an offence occurs before a Committee of the whole House, the Chairman may name the Member. Upon naming, the Chairman will forthwith suspend the proceedings of the Committee and report the matter to the House. The Speaker will then put the question relating to the motion for suspension, as if the offence had occurred before the House itself.

SUSPENSION OF SITTING

If a situation of grave disorder arises in the House, the Speaker may, under Standing Order No 46, adjourn the House without question or suspend the sitting until a time of his or her choosing. Suspensions of sittings are of varying length - in the past they have been of between 10 and 30 minutes.

DEPUTY SPEAKERS

In the above instances, unless specifically stated, the Chairman and First and Second Deputy Chairmen of Ways and Means, acting in their capacities as Deputy Speaker, may invoke the Speaker's power to deal with a situation as they deem fit.

IMPRISONMENT OF A MEMBER

A person sentenced to more than one year's imprisonment or detention for an offence committed in the UK or elsewhere (including those repatriated from overseas prisons) is disqualified for election to, or if already a Member of sitting and voting in, the House or its Committees. This detention is relevant if served in the UK or Republic of Ireland and is also applicable to a person unlawfully at large during the time the sentence should be served. The seat of any Member so disqualified is declared vacant and a new writ issued for a by-election. (*Representation of the People Act 1981*, ss1,2; *Repatriation of Prisoners Act 1984*, s7).

When a Member is imprisoned for any length of time, more or less than a year, the sentencing judge or magistrate will inform the Speaker of the detention by letter. Similar notification

occurs for a suspended sentence. The Speaker will inform the House of the contents of the letter at the earliest opportunity and order that the text be published in the Votes and Proceedings and Official Report.

If a Member has been detained so briefly so as not to affect attendance at the House, the Speaker does not necessarily notify the House of the arrest.

If a Member is convicted, but released on bail pending appeal, or is fined, the Judge or Magistrate does not have to inform the Speaker.

BANKRUPTCY

An adjudged bankrupt is disqualified from election to, or if already a Member, from sitting or voting in, the House or its Committees (*Insolvency Act 1986, s427*). This disqualification remains in force until either the adjudication is annulled or a court grants a discharge.

When a Member has been declared bankrupt, the Speaker is notified of the adjudication by the Court. The same court will later notify the Speaker that either the bankruptcy has been annulled, or that a period of six months has elapsed without annulment. In the latter case, the seat of the Member is declared vacant and a new writ issued for a by-election. Members who have lost their seats through bankruptcy may seek re-election to the House, once the bankruptcy has been discharged.

EXPULSION

As stated in the introduction to this *Factsheet*, expulsion is the ultimate power available to the House to remove those it considers unfit for membership. Members in the past have been expelled for such crimes as perjury, forgery, fraud and corruption.

The procedure for expulsion is that a motion is moved, generally by the Leader of the House, "*that ... be expelled from this House*". It is customary, depending on the circumstances, that a Member be ordered to attend to offer an explanation. However, if it is apparent that no possible excuse could be given, then the order to attend is not made. Should the Member be already in prison for the offence, then the prison governor may be ordered to bring the Member before the House: however in the case of Mr Baker (see below) no order for attendance was made.

An expelled Member may seek re-election to the House, even within the term of the same Parliament that elected him, a principle established in 1782 as a result of the case of John Wilkes, who was expelled three times and once had his return amended in favour of his defeated opponent.

There have been three instances this century of expulsion:

Horatio Bottomley (Independent, South Hackney), was expelled in August 1922, after being convicted of fraudulent conversion of property and sentenced to seven years' imprisonment.

Garry Allighan (Labour, Gravesend) was expelled on 30 October 1947, for lying to a committee and for gross contempt of the House after publication of an article in the *World's Press News* accusing Members of insobriety and of taking fees or bribes for the supply of information.

Peter Baker (Conservative, South Norfolk) was expelled on 16 December 1954, after being sentenced to seven years' imprisonment for forgery. In this instance, the motion for expulsion need not have been moved: under the provisions then still in force of the *Forfeiture Act 1870*, he would have been automatically disqualified. These provisions were amended by the *Criminal Law Act 1967*.

TREASON

A person convicted of treason is disqualified for election to, or if already a Member of sitting and voting in, the House or its Committees. (*Forfeiture Act 1870*, amended by the *Criminal Law Act 1967*). This disqualification remains in force until either the sentence has expired or a pardon has been granted.

The provisions of the *Forfeiture Act* have only once been invoked. In 1903 Arthur Lynch (Nationalist, Galway City) was convicted of high treason for fighting against the Crown in the Boer War. The House was advised by the then Attorney General (Sir Robert Findlay), that as Mr Lynch was automatically disqualified by the *Forfeiture Act*, it was not necessary for the House either to consider the judgement or move a motion for expulsion. Instead the House immediately proceeded to discuss and move a motion for a new writ for a by-election (see HC Deb, 4th Series, vol 118, c1121-1148, 2 March 1903). Lynch's sentence to death was commuted to penal servitude for life. He was released on licence in 1904 and received a free pardon from the Crown in 1907. He returned to the House as Member for West Clare in 1909, until his retirement in 1918. He unsuccessfully contested Battersea South for Labour at the 1918 General Election.

POLITICAL PARTIES

Members may of course be de-selected by their constituency or national party, or asked to resign immediately according to the practice of the parties concerned. The parliamentary party may withdraw the whip, which effectively isolates a Member from the party machinery within the House, or indeed expel the Member from the Party. The most recent occurrence of this was the expulsion of the Member for Brent East (Mr Ken Livingstone) from the Labour Party for standing as an independent in the election for London Mayor. A Member does not lose his or her seat as a result and continues to sit, either as an independent, or as a Member of a different political party if they so choose.

**SECTION B:
STRANGERS**

The House of Commons has the right to punish non-Members (strangers) for disorderly and disrespectful acts committed against it. This right exists irrespective of whether these acts occur before the House or one of its Committees, within the precincts of the House of Commons or outside it. Such acts are considered by the House to be a contempt, and its power to punish such acts is not challenged by the courts.

**OFFENCES IN THE
GALLERY OR
COMMITTEE ROOMS**

Disturbances occurring within the Strangers' Gallery of the House or before any of its Committees, are dealt with by the Serjeant at Arms and his staff of Doorkeepers. Offenders are removed and escorted from the premises. If the disruption was serious enough to interrupt the sitting of the House or Committee, the offender(s) may be detained in a police custody room on the premises until the rise of the House, at whatever hour that may be. Should such a disturbance be of a criminal nature, the House can allow the offender to be transferred into police custody outside the Palace of Westminster. This occurred on 23 July 1970 (CS gas canisters thrown into Chamber from Gallery) and 6 July 1978 (straw and manure thrown into Chamber from Gallery).

**COMMITTEE
WITNESSES**

A refusal by a witness to attend a Select Committee may be construed as a contempt. If a witness is unwilling to attend, the committee can agree to order the attendance of a witness at a specified date and time. Such an order is signed by the Chairman of the Committee, and is either forwarded to the witness by registered post or served personally by a member of the Serjeant at Arms' office. Similarly, an order may be served upon a witness (not being a Minister, a Member of either House, or an officer of a Government department) for the production of papers or records required by a Select Committee.

If a Select Committee has issued a summons to a witness to attend, or produce papers, and the witness has not responded, it is for the House to act (or not) on the basis of a Report made to it by the committee. The House may order the Serjeant at Arms as Warrant Officer of the House to serve a Warrant on the witness. Formerly, the Serjeant would be sent with the Mace as the symbol of his authority, to order the attendance of witnesses. However, by the end of the seventeenth century, it had become accepted that the Mace was required to remain in place for the House to meet. Therefore, the device of the Speaker's Warrant was invented. In serving the Warrant, the Serjeant or his appointee may call on the full assistance of the civil authorities, including the police.

The last use of the Warrant was in January 1992 (when the Maxwell brothers were reluctant to attend the Social Security Select Committee inquiry into the operation of pension funds).

Refusal to answer the questions of a Select Committee is more complicated. In such an instance the House would look to precedent. A series of options, mentioned below, are available

to treat contempt of the House; these would similarly apply to contempt before a Committee.

STANDARDS AND PRIVILEGES COMMITTEE

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Because neither House could perform its functions without the unimpeded services of its Members, privileges are required by each House for the protection of its Members and for the vindication of its own authority and dignity.

(Memorandum by the Clerk of the House of Commons to the Report by the Select Committee on Parliamentary Privilege, HC 34, 1966-67.)

Following the reports of the then Nolan Committee and the House's Select Committee on Standards in Public Life (HC 637 1994/95), in 1995, the House of Commons merged the functions of the former Select Committees on Members' Interests and on Privileges into the Select Committee on Standards and Privileges: the House also appointed Sir Gordon Downey, KCB, as Parliamentary Commissioner for Standards, now Mrs Elizabeth Filkin. Matters involving the declaration and registration of Members' interests, or complaints regarding the more general conduct of Members, are dealt with in the first instance by the Commissioner, who advises the Committee on an appropriate course of action.

The House may consider a matter relating to privilege itself: more often, however, matters arise, usually involving the conduct of non-Members, which need more detailed investigation. In these circumstances, the House would refer the matter to the Select Committee of Standards and Privileges. Although the Committee may consider any matter relating to privilege referred to it by the House, the normal practice is for such cases to be raised by individual Members by letter with the Speaker, who has the authority to decide whether or not to allow the Member to move a motion relating to the matter in the House: such a motion has precedence over other business. The usual course after the Motion has been moved would be for a Member (often the Leader of the House) to move that the matter be referred to the Select Committee on Standards and Privileges. The Committee would report its recommendations to the House: these would be debated and the House would decide whether or not to accept the recommendations.

In recent years, the House has shown increasing reluctance to exercise its powers even when the evidence of a contempt is clear. Indeed, in 1967, the Select Committee on Parliamentary Privilege (a Committee specially set up to consider every aspect of privilege) recommended that "the House should

exercise its penal jurisdiction (a) in any event as sparingly as possible, and (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective functions". This recommendation was endorsed by the Committee of Privileges in 1977 and approved by the House and given immediate effect on 6 February 1978. This decision guides the Speaker, the House, and the appropriate Committee.

A new Joint Committee on Parliamentary Privilege was set up in the 1996-97 Parliament, to consider the current situation on privilege, given, especially, the aftermath of the 'cash for questions' affairs and on Members' ability to waive privilege. It reported on 30 March 1999 (HC 214 1998/99, available on the internet at:

<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>)

The House debated the report on a motion for the adjournment on 27 October 1999, but has not yet agreed to implement its findings. Legislation also would be necessary to implement its recommendations.

CENSURE BY THE SPEAKER

If the witness is in attendance, he or she may be brought by the Serjeant at Arms to the Bar of the House and before the assembled Members, to be admonished by the Speaker. If not in attendance, the witness may be ordered into the custody of the Serjeant, by use of the Warrant, to be brought to the Bar at a date and time specified by the House. The last stranger (non-Member) to be brought before the Bar and admonished by the Speaker was John Junor on 24 January 1957, for an article published in the Sunday Express casting doubt on the honour and integrity of Members. Junor apologised and no further action was taken. Members are admonished standing in their places. The last Member to be so admonished was Mr Tam Dalyell on 24 July 1968. Until 1772 it was a requirement for offenders to kneel at the Bar.

On 6 February 1750, Alexander Murray was called to the Bar in connection with malpractice at a City of Westminster election. Found guilty by the House, he was ordered into custody at Newgate Prison until the end of that parliamentary session. When hearing sentence, he refused to kneel at the Bar and was further found guilty of a "high and most dangerous contempt of the authority and privilege of this House". The House further ordered that while in Newgate, (Murray) "be not allowed the use of pens, ink or paper; and that no person be admitted to have access unto him, without the leave of this House". (HC Journal 6 February 1750)

FINES

The last fine imposed on an offender by the House was on 6 February 1666. Thomas White was fined £1000 (£114,000 today): White absconded after being ordered into the custody of the Serjeant at Arms, for causing Henry Chowne, the Member for Horsham, to be arrested and prevented from attending Parliament. The power to fine was denied in 1762 by Lord Mansfield in *R v Pitt* and *R v Mead* (3 Burr 1335) and the House has not sought to revive the claim to fine since. In a report in 1967, the Privileges Committee recommended that legislation be introduced to enable the Commons to impose fines with statutory authority. The Committee repeated this recommendation in 1977, but no action has been taken.

IMPRISONMENT

The last imprisonment by the Commons of a non-Member was of Charles Grissell in 1880 (breach of privilege in connection with the Committee on the Tower High Level Bridge [Metropolis] Bill). The House still retains the power to imprison. However, it is now considered not to have the power to imprison beyond the length of the Parliamentary session. Offenders are ordered to be detained either in one of HM Prisons, or in the custody of the Serjeant at Arms. If at the time of committal the ultimate place of punishment has not been determined, or when the offender is not already in the custody of the Serjeant, the House will make an order for the offender to be taken into the Serjeant's custody. The offender is subsequently committed to prison by the power of the Speaker's Warrant. Two Warrants are issued, one to the Serjeant empowering him to carry out the arrest, the second to the prison ordering the detention. If the governor of the prison refuses the Warrant, that in itself constitutes a breach of privilege.

In the lower third of the Clock Tower, is a room in which unruly Members were confined when committed to the custody of the Serjeant at Arms. Technically, a Member so committed could be detained for the remainder of the Parliamentary Session, but one day was the general rule. The last Member committed was Charles Bradlaugh (Northampton), who spent the night of 23 June 1880 in the room. Bradlaugh had repeatedly refused to take the oath of allegiance required of every newly elected Member and claimed the right to affirm. Over the next six years, he was excluded from the House, unseated four times, and re-elected for the same constituency every time. He finally took his seat in 1886 and remained a Member until his death in 1891, having successfully introduced a Bill which led to the Oaths Act 1888, which allowed an affirmation to be taken in all cases where an oath was necessary.

The former cellroom is now used for other purposes.

RECOURSE TO LAW

If the breach of privilege is also an offence in law, or the punishment in the power of the Commons is inadequate for the nature of the offence, then the House may ask the Attorney General to prosecute. The House may also direct a

prosecution as either a substitute for, or in addition to, its own punishment.

SECTION C CONTEMPT

Erskine May's *Parliamentary Practice* defines contempt as:

"generally speaking any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or Officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence."

Following are some of the contempts listed in *May* (For further details see Chapters 9 and 10) resulting from cases in this century.

Disorderly or disrespectful conduct by strangers, parties or witnesses in the presence of the House or its committees, including a meeting of a Select Committee away from Westminster; witnesses before a committee who have refused to produce or have destroyed documents in their possession; refusal to answer a Select Committee; witnesses who have persistently misled a Select Committee.

Misconduct of Members or Officers. Members deliberately misleading the House. Members entering into an agreement with another person, to advocate that person's claim before the House for a financial reward, or furtherance of the Member's commercial interest; refusal of Members to serve on a committee where attendance by order of the House is compulsory.

Reflections on the House, by means of words spoken or written, reflecting on the character of proceedings of the House.

Premature Publication on disclosure of Committee proceedings, including draft report, by Members or others.

Serving or executing civil or criminal process within the precincts of the House.

Representing oneself as a Parliamentary Agent without possessing the required qualifications.

Use of the crowned portcullis and the name of the Commons in connection with an unofficial publication.

Obstructing Members or officials in the discharge of their duty, threatening a Member with the possibility of legal proceedings for a Question asked in the House.

Reflections on the character or impartiality of the Speaker or Deputy Speakers.

It should always be remembered that what has been regarded as contempt has changed over the years, and is in a state of continual evolution as circumstances change.

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House of Commons Information Office

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Factsheet G6

Disciplinary and Penal Powers of the House

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