



## House of Commons Background Paper: Disciplinary and Penal Powers of the House of Commons

Standard Note: SN/PC/06487

Last updated: 27 November 2012

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"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."

Commons Journal 22 January 1693

The right of House of Commons to discipline offenders has been established by precedent and accepted by the courts. The Commons' power to commit offenders was exercised frequently until the end of the nineteenth century and repeatedly recognised by the courts. 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. This power has not been exercised for decades. The House also has various powers, albeit rarely used nowadays, to punish strangers (i.e. non-Members) who offend it in some way. For authoritative guidance, see Erskine May's *Parliamentary Practice* (24<sup>th</sup> ed 2011).

Standard Note 2430 [Members suspended from the House of Commons](#) lists MPs who have been suspended from the chamber since the second world war.

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# **1 Members**

There are two main avenues which may lead to the suspension of a Member. The first is for misbehaviour in the chamber. The second is where a Member has been found to have broken the Code of Conduct for Members or committed a contempt.

## **1.1 Calls to order, resume seat or leave chamber**

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 allow another Member to speak (give way) whenever 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. Disobedience may lead to the Speaker requesting the Member to voluntarily leave the Chamber for the remainder of that day's sitting. Such a request is not governed by Standing Order and the Member may take part in Divisions and stay within the precincts of the House (throughout this Note, precincts refers to all the buildings that comprise the Parliamentary Estate). Further disobedience may lead the Speaker to 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.

## **1.2 Naming of a Member and suspension**

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 45A salary is forfeited during the period of suspension.

The Chair 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 Chair 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 Deputy Speaker presiding may name the Member. Upon naming, the Deputy Speaker 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.

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.

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

### **1.3 Suspension following a finding of misconduct**

Suspensions may also be carried out following order of the House. This is most often for reasons of misconduct. 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), which has been subsequently updated.

If the Committee considers a breach of the Code to be serious, the Committee can recommend that a Member apologise to the House. 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. 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.

### **1.4 Members detained in custody**

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.<sup>1</sup> (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.

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. However, this power has not been used for the past few decades. The

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<sup>1</sup> *Representation of the People Act 1981*, ss1,2; .

most recent report from the Standards and Privileges Committee where the issue of expulsion was considered in 2012 stated that “Expulsion was an extreme punishment, and the choice of the electorate should be overturned very rarely.”<sup>2</sup> The Joint Committee on Parliamentary Privilege report of 1999 noted that “although proceedings in Parliament are excluded from the *Human Rights Act 1998* and from the jurisdiction of UK courts, they may nevertheless be within the jurisdiction of the European Court of Human Rights. The existence of this jurisdiction is a salutary reminder that , if the procedures adopted by this Parliament when exercising its disciplinary duties are not fair, the proceedings may be challenged by those prejudiced”.<sup>3</sup>

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 in the twentieth 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.

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

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<sup>2</sup> Standards and Privileges Committee report [Mr Denis MacShane](#) HC 636 2012-13, para 49

<sup>3</sup> [Joint Committee on Parliamentary Privilege](#) HL Paper 43-I HC 214 1998-99, para 284

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.

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. 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.

## 2 Non-members

The House of Commons has the right to punish non-Members 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, a term explained below in section 3.

Disturbances occurring within the Public 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), 6 July 1978 (straw and manure thrown into Chamber from Gallery), and most recently on 12 September 2004 when five protesters broke into the Commons chamber while MPs debated whether to ban hunting with foxes.

Library Standard Note 6208 [Select Committees: evidence and witnesses](#) reviews the power of select committees “to send for persons, papers and records”, that is, to obtain oral and written evidence. Although select committees have these powers, they can ultimately only be enforced by decision of the House. 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 for the production of papers or records required by a Select Committee.<sup>4</sup>

In July 2011 the Culture, Media and Sport Committee invited Rupert Murdoch, Chair and CEO of News Corporation, James Murdoch, Chairman and Chief Executive of News Corporation (International), and Rebekah Brooks, former Chief Executive of News International, to appear before the Committee. In a press notice, the Committee stated that because both Rupert Murdoch and James Murdoch had declined the invitation to appear on

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<sup>4</sup> Erskine May, *Parliamentary Practice*, 24th edition, 2011, p820

a specified date the Committee had decided to summon them to appear on 19 July 2011.<sup>5</sup> The witnesses accepted the summons to attend.

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.

Refusal to answer the questions of a Select Committee can also be treated as a contempt. The House of Commons *Guide for witnesses giving written or oral evidence to House of Commons select committees* stresses the duties of witnesses who give evidence to select committees:

The protection which absolute privilege gives to those preparing written evidence and to witnesses must not be abused. In particular, witnesses should answer questions put to them by a committee **carefully, fully and honestly**. Deliberately attempting to mislead a committee is a contempt of the House, which the House has the power to punish.<sup>6</sup>

The Culture Media and Sport Select Committee report into News International and phone hacking in 2011 found that a number of witnesses had given misleading evidence. The matter was referred to the Standards and Privileges Select Committee on 22 May 2011. Formal minutes from the Standards and Privileges Committee on 3 July 2011 noted that the Committee would not recommend to the House its use of a formal power to commit to prison and that the maximum punishment it would recommend would be admonishment.<sup>7</sup> The Committee has yet to report its findings.

## 2.1 Enforcement mechanism

Following the reports of the Committee on Standards in Public Life 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. Two separate committees are due to be created shortly, since the recommendation from the Committee on Standards in Public Life in 2009 that non-members be appointed to serve on the Standards Committee, as a reassurance to public confidence in the ability of the Commons to regulate its members.. For further details see Commons Library Standard Note 5127 [The Code of Conduct for Members: recent changes](#).

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

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<sup>5</sup> Culture Media and Sport Committee press notice, [Commons summons News International executives](#), 14 July 2011

<sup>6</sup> House of Commons, [Guide for witnesses giving written or oral evidence to House of Commons select committees](#), June 2011, p11. Guidance has also been published for Members who serve on select committees: House of Commons, [Guide for select committee members](#), March 2011

<sup>7</sup> [Standards and Privileges Committee extract from formal minutes](#) 3 July 2011

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 modern times, the House has shown increasing reluctance to exercise its powers even when evidence of a contempt is clear. Indeed, in 1967, the Select Committee on Parliamentary 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. This position was endorsed by the Joint Committee on Parliamentary Privilege.<sup>8</sup>

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.

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)

The last fine imposed on an offender by the House was on 6 February 1666. Thomas White was fined £1000: 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, followed by the Joint Committee on Parliamentary Privilege in 1999, but no action has been taken.

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<sup>8</sup> [Joint Committee on Parliamentary Privilege](#) HL Paper 43-I HC 214 1998-99,

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 no longer retains its right to imprison. Instead the House uses a division of the Metropolitan Police based on the Parliamentary Estate to detain and, if necessary, arrest individuals.

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. The former cellroom is now used for other purposes.

### 3 Contempt

Erskine May's *Parliamentary Practice* (24<sup>th</sup> ed 2011) noted “the origin of the power to punish for contempt is probably to be found in the medieval concept of the English Parliament as primarily a court of law.”<sup>9</sup> Erskine May defines contempt as:

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. Ibid p251<sup>10</sup>

Following are some of the contempts listed in May (For further details see Chapters 15 and 16) resulting from cases in the past 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.

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<sup>9</sup> Erskine May Parliamentary Practice (2011) p192

<sup>10</sup> Ibid p251

- 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.