

## SUBMISSION BY THE NEWSPAPER SOCIETY

The Newspaper Society represents regional media companies which publish around 1100 regional and local newspapers with 1600 associated websites, provide a wide variety of ever developing digital services, niche publications and some also have local radio and local television interests.

The Government's Green Paper on Parliamentary Privilege and the Joint Committee's inquiry are relevant to local media coverage of Parliamentary proceedings. The regional press is no longer confined to print reports of debates- it can inform, update and engage its audience in appropriate ways over a wide range of media platforms- in print, online, through video, blogs, twitter, forums, events and broadcasts. Direct involvement of MPs in titles' political coverage - election forums, online constituents' questions-can also refer back to Parliamentary proceedings, debates, statements, questions asked, EDMs put down. Many regional titles have dedicated Westminster based correspondents lobby. The NS's 'Newspaper Conference' <http://www.newspapersoc.org.uk/newspaper-conference> comprises political correspondents and London editors representing a wide range of local and regional newspapers. Other titles cover Parliamentary matters through their home based political or specialist editors rather than lobby correspondents , while all titles will cover pertinent proceedings in Parliament through their news or business or other coverage - highlighting the issues relevant to their readership and audiences, spotlighting the work of local MPs, identifying and publicising issues of concern which local people have raised individually or in a group with their MP, championing causes, campaigning for changes to the law, policies or practices which affect their readers' lives.

Regional and local media encounter the same problems in reporting Parliamentary proceedings as the national media, particularly where the law protects the freedom of speech and action of Parliamentarians, but not the fair and accurate media report of them. Publication of an advance draft of an EDM would not attract the protection of the Parliamentary Papers Act 1840, nor would defences automatically be forthcoming for reports of correspondence between an MP and his constituent - and certainly not if it related to family courts proceedings even if all those involved actively wanted wider publicity to highlight an issue of wider public interest ; while if an MP or Peer chose to speak out in either House in contravention of an injunction, be it obtained by Government, company or individual the local media company and its editor would be as uncertain as the Committee on super -injunctions as to whether they could fairly and accurately report his words through any means or media, or would be facing substantial fine ( or worse) for contempt for doing so.

We hope therefore that the Joint Committee on Parliamentary Privilege will recommend improvements which will facilitate all media reporting of proceedings in Parliament by providing straightforward and certain defences against any legal action brought in Parliament or the civil or criminal courts or elsewhere.

### **Green Paper: Part One Chapter Three: Freedom of Speech and Criminality**

The NS has no objection in principle to measures that facilitate freedom of speech within Parliament, including Members' correspondence and material incidental to that, or evidence to Parliamentary committees, nor to extension of courts' use of proceedings in Parliament. However, care must be taken to ensure that any such extension of Parliamentarians'

freedom is accompanied by comprehensive measures which will ensure that the media can easily report and comment upon what has been said and done and its context, fairly and accurately, contemporaneously or otherwise without fear of legal action or sanctions. The media must benefit from appropriate defences or safeguards of its reports in whatever form or whatever means they are made available to their audience.

Media protections require extension of defences against contempt and other legal proceedings, in addition to defamation. If MPs, peers or non-members were to benefit from extension of privilege to criminal offences, media coverage concerning such Parliamentary proceedings should also benefit from appropriate defences.

If more use were to be made of material in court proceedings, then care needs to be taken to deal with issues such as protection of sources and, indeed court reporting, access to court documentation and other open justice aspects. New restrictions or problems detrimental to freedom of speech, open justice or media reporting must be avoided. The interaction with the DPP guidelines on public interest considerations and prosecution of offences involving the media and other safeguards would also have to be considered, to ensure that freedom of expression protections were strengthened and were not diminished in any way.

## **Chapter Four: Freedom of Speech and Civil Law**

### **Freedom of speech and injunctions**

The Newspaper Society supports previous Joint Committees' recommendations against restricting freedom of speech in Parliament and legislating to prevent members' breach of injunctions. However, we do advocate changes in favour of freedom of speech in Parliament and its wider dissemination by media report, through extension of defences for any media report of members' use of absolute privilege to circumvent injunctions and comment.

### **Rights of warning or reply (injunctions and defamation)**

The NS would not support any system of right of prior warning or right of reply which would require the media to check that the member had complied with the appropriate procedure, or oblige the media to publish the reply or risk loss of any defence which would otherwise be available for any media report.

### **Waivers and civil law- defamation**

The NS opposed the inclusion of section 13 in the Defamation Act 1996 and believes that it should be repealed as suggested by the Green Paper. The introduction of a discretionary power to waive privilege would not facilitate fair and accurate reporting of Parliament. It could lead to greater use of such power; moreover, its use would be unpredictable and retrospective. We agree that the power of waiver could create a chilling effect could be created by the mere threat or possibility of its use, which would be detrimental to openness of debate and press reporting of the proceedings.

### **Waivers and tribunals of inquiry**

We note the Green Paper's concern that waiver for the purposes of tribunals of inquiry could also create a chilling effect. We would draw to the committees' attention that the Green Paper's reasons for suggesting that no change is needed in practice are actually dependent upon press and public access to the statements made or evidence given to the

Inquiry or Parliament and the wider dissemination by way of media report. This underlines the importance of open justice and open Committee proceedings (including any dealing with intelligence and security matters), the necessity for media access to proceedings and documentation, without automatic or discretionary reporting restrictions and for comprehensive defences for publication of reports of the proceedings.

### **Chapter Seven- Select Committee Powers, criminalising contempt**

The NS would obviously be concerned by any change to Select Committee powers to summon witnesses, answer questions, produce documents and records that failed to respect the importance of confidentiality of sources or protection of journalistic material and thereby put journalists, editors and publishers and other relevant non-members at greater risk of contempt and sanctions of reprimand, fine or imprisonment without even the safeguards of normal independent investigation and prosecutions procedures and court proceedings (however doubtful the power or rare or theoretical the current use).

We would also be very concerned by any criminalisation of contempt which could draw in media and create similar problems or render them subject to contempt proceedings and sanctions including imprisonment.

### **Chapter Eight- Reporting of parliamentary proceedings**

The NS considers that media reports should be protected by absolute rather than qualified privilege defences against all legal claims. These defences should provide protection against both defamation and contempt, plus additional measure necessary for defence against any criminal offences. This legal protection should cover all fair and accurate reports by any media of Parliamentary debates or other Parliamentary proceedings and for copies, abstracts, extracts or summaries of reports, papers, votes or proceedings. Thus it would be very helpful if wider changes could be made to the Parliamentary Papers Act 1840 and any other relevant legislation beyond the welcome reforms proposed by the Green Paper for reversal of the burden of proof and extension to the broadcast media. All defences should protect all reports at any time in any form. The defences should not be limited to contemporaneous reports, such as live feeds, but extend to all later publications.

Legal uncertainty as to the availability of defences does affect the local media and its report and comment upon statements made in Parliament. It inhibits reports of Parliamentary proceedings relating to material which is or might be in breach of injunctions or court orders prohibiting revelation of certain information, or preventing the publication of identifying information about individuals or organisations of any description. Instances include anything from the Spycatcher to last year's examples. This can affect report of important issues and discussion of relevant matters. It can also hinder MPs' explanation to their own constituents and electors of their reasons for making any such statement.

The NS does not consider that requiring the media to satisfy new public interest tests prior to publication in order to benefit from any defence would alleviate the media's problems. This would not just delay reporting, but probably prevent it, as local and regional media companies might not be in position quickly to assess and substantiate public interest arguments, or feel that it would be too costly to risk legal action or to defend any legal action and so decide against publication.

We hope that it would be possible to bring forward legislation to enable the straightforward publication of reports of Parliamentary proceedings and papers, in any form, media and at

any time- and comment upon them- both contemporaneously and at any time thereafter, without fear of civil or criminal legal action, including contempt proceedings.

*21 January 2013*