Select Committees: Understanding and Regulating the Emergence of the 'Topical Inquiry'

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Abstract

Reforms to departmental select committees have enhanced their authority and independence within the House of Commons. Some committees have used this enhanced profile to investigate the actions of specific individuals or private corporations or organisations. Typically, this is in response to media reports that allege some form of wrongdoing. As the standing orders of the House of Commons empower committees to scrutinise government departments and agencies, this is a departure from established practices. This article examines the emergence of these 'topical inquiries', determining the features that indicate their value. In particular, topical inquiries that fill an 'accountability gap' are the most valuable. An accountability gap arises when other forms of scrutiny or accountability are merely performative or have failed. When conducting a topical inquiry, committees are underpinned by parliamentary privilege, meaning that those subject to criticism have little opportunity to respond regardless of any reputational, commercial or other damage caused. Consequently, if thought a desirable function of Parliament, topical inquiries require enhanced processes to ensure procedural fairness and to address potential human rights concerns. This would require amending the standing orders specifying topical inquiries as a type of inquiry that a select committee could pursue, complying with this enhanced process.

1. Introduction

> 'select committees … are there to hold the government to account in the public interest, not to form a posse roaming the country in search of wrong-doing for which the law already provides remedies, whether civil or criminal'.
>
> (Lord Lisvane, 2016, p 283)

Inside the front cover of every select committee report is a section headed "Powers". It states that, 'the Committee is one of the departmental select committees, the powers of which are set out in the House of Commons Standing Orders, principally SO No 152'. Standing Order No 152 ('SO No 152') (House of Commons, 2018) explains that departmental select committees ('committees') are to examine the 'expenditure, administration and policy of the principal government departments … and associated public bodies'. The origins of this standing order can be traced to 1978, when the Select Committee on Procedure reported that there was a 'strong desire' for a more effective means of scrutinising 'the expenditure, administration and policy of government departments' (Select Committee on Procedure, 1978, para 5.7). This led to a proposal of select committees, 'based primarily on the subject areas within the responsibility of individual government departments' (ibid, para 5.18). In 1979, when the Leader of the House of Commons, Norman St John-Stevas, introduced these proposals into the House, he emphasised that that the purpose behind the reforms was to 'strengthen the accountability of Ministers to the House for the discharge of their responsibilities' (HC Deb, 25 June 1979, col 44).

Usually, committees exercise their powers under SO No 152 to scrutinise government departments and inquire into the government's policy proposals or emerging policy issues. This article is concerned with the emerging development of committees holding inquiries that are not focused on government but are instead a fact-finding exercise focused on the actions of private individuals or companies. The committee then casts judgment on what they have found.

Often held in response to media reports of wrongdoing, it is not immediately apparent that these 'topical inquiries' are within the scope of the committees' terms of reference as set out in SO No 152. However, as *Erskine May* confidently asserts:

> When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (the order of reference). The interpretation of the order of reference of a select committee is, however, a matter for the committee. (*Erskine May's Parliamentary Practice*, 2019, para 38.11)[1]

To consider this development, this paper briefly considers the established role of select committees and recent reforms, before examining the following four examples of a 'topical inquiry':

- Culture, Media and Sport Committee, *News International and Phone Hacking*.
- Work and Pensions and Business, Innovation and Skills Committees, *BHS*.
- Business, Innovation and Skills Committee, *Employment Practices at Sports Direct*.
- Digital, Culture, Media and Sport Committee, *Combatting doping in sport.*

As this is an *ad hoc* development by different committees, it is difficult to establish a clear pattern. Despite this, certain features can be identified which point towards the value of a topical inquiry. In particular, the subjects of these four topical inquiries involve different forms of self-regulation and a potential accountability gap. More broadly, it needs to be established whether this new type of inquiry is a desirable function of committees, and whether the powers of select committees should be refined. This requires considering of how parliamentary privilege applies these topical inquires. Finally, the relationship between the topical inquiry and public inquires under the Inquiries Act 2005 is explored.

2. Recent Reforms

Erskine May states that select committees are considered 'as extensions of the House, limited

[1] Hereinafter 'Erskine May'.

in their inquiries by the extent of the authority given them' (*Erskine May*, 2019, para 38.14). Consequently, the importance of SO No 152 is that it outlines the scope of the powers granted to a select committee. In particular, SO No 152(4) gives a select committee the power to 'send for persons, papers and records'. As noted in the quotation from *Erskine May* above, a select committee enjoys considerable latitude in how it sets about its business. Despite this, the prevailing view was that committees provided a weak form of accountability. Although, recent studies have challenged this view (Flinders and Kelso, 2011; Russell and Cowley, 2016), a further study that considering committee activity from 1997-2010 remained reactive rather than proactive. Committees focused on reviewing government progress, new policy proposals or investigating alleged government failure (Benton and Russell, 2013, p 778).

One key restraint was removed with the introduction of elections for select committee chairs and members. This was proposed by the Wright Committee in the wake of the MPs expenses scandal and implemented after the 2010 General Election (House of Commons Reform Committee, 2008). An immediate effect was to curtail the ability of the party whips to control the membership of committees, potentially keeping away more independent minded backbenchers with specific interest from certain committees (Maer, Gay and Kelly, 2009).

The impact was immediate, with one leading commentator stating in 2011, that 'select committees have amassed more power and respect in the year or so since they resumed operations after the election' (D'Arcy, 2011), the Political and Constitutional Reform Committee concluded that the election of committee chairs had improved their standing in the House (Political and Constitutional Reform Committee, 2013, para 12). They were also receiving considerably greater attention from the media than in the previous parliament (ibid, para 13; Ev w31).

3. The Topical Inquiry: The Boundary of Standing Order No 152?

A key cause of the greater media attention on select committees has been the live coverage of oral evidence sessions from the topical inquiries discussed in this section. The high profile of the witnesses meant that their oral evidence sessions became significant parliamentary

and media events. BBC Two cleared their schedules to televise live the questioning of Rupert and James Murdoch and Rebekah Brooks, as part of the phone-hacking inquiry (BBC, 2011). Sir Philip Green was questioned for six hours about the collapse of BHS; this came a week after Mike Ashley was questioned by the Work and Pensions Committee over employment practices at Sports Direct. In 2017, key figures within sport, including Lord Coe and Sir Dave Brailsford, were questioned about doping.

This section outlines why these are examples of topical inquiries, and how they engage with SO No 152.

3.1. *News International and Phone-hacking*

It is clear that a broad interpretation of SO No 152 should be given. In particular, the Culture, Media and Sport Committee considered the regulation of the press in 2007 and 2010 (Culture, Media and Sport Committee, 2007a; Culture, Media and Sport Committee, 2010). On a literal reading of the standing order, the link with government policy may not be obvious. However, both inquiries were prompted by specific issues in the press. In its 2007 report, the Committee considered the harassment Kate Middleton had received from photographers, and in the 2010 report, the Committee considered super-injunctions, Max Mosley's prosecution of the *News of the World,* and press standards following the disappearance of Madeline McCann. Although not scrutinising a government department or agency, these inquiries are clearly policy inquiries within the terms of SO No 152. The government supported these inquiries stating that the 'industry benefits enormously from this type of Parliamentary scrutiny' and prevents 'complacency in the self-regulatory process' (Culture, Media and Sport Committee, 2007b).

The Committee's involvement with phone-hacking was more complex as the scandal unfolded. One cause of the 2007 inquiry was the convictions of Clive Goodman, the former royal editor of the *News of the World* and Glenn Mulcaire, a private investigator, for conspiracy to unlawfully intercept communications, by hacking into voicemails left for the Royal Family and other high-profile figures. Witnesses from the *News of the World* and the press in general assured the Committee that the Goodman and Mulcaire case was an isolated Incident (Culture, Media and Sport Committee, 2007a, paras 17-26). Then, while taking evidence for the 2010 inquiry, *The Guardian* reported that phone-hacking had taken place on a far greater

scale than had previously been understood (Davies, 2009). As these reports cast doubt on evidence that the Committee received in 2007, it restarted taking oral evidence.

It was at this point that the inquiry started to develop into a fact-finding exercise, to allow the Committee to determine whether it had been misled in 2007. The Committee took evidence from John Yates, Assistant Commissioner of the Metropolitan Police, Colin Myler, Editor, *News of the World,* and Tom Crone, the newspaper's Legal Manager. The *Guardian* article led the Committee to seek further evidence from the Neville Thurlbeck, the newspaper's Chief Reporter and Rebekah Brooks, CEO of News International, the owner, as well as Goodman and Mulcaire. Only Thurlbeck was willing to give evidence, but only in private. The Committee chose not to compel any witness to give evidence as it would delay the publication of its report and Parliament was due to be dissolved for the 2010 General Election (Culture, Media and Sport Committee, 2010, para 407).

In spite of the lack of evidence of key witnesses, in February 2010, the Committee published its report. This criticised the Metropolitan Police and the Press Complaints Commission for deciding not to investigate phone-hacking further (ibid, paras 467, 472), and stated that it 'repeatedly encountered an unwillingness to provide detailed information that we sought, claims of ignorance or lack of recall, and deliberate obfuscation' (ibid, page 7). In particular, the Committee expressed concerns about the 'collective amnesia afflicting witnesses from the *News of the World*' (ibid, 442). The Committee's inquiry had shown that there was a lacuna in regulation, there was evidence of widespread wrongdoing, which had not been investigated properly by the police or the Information Commissioner, nor had any sanction been imposed by the Press Complaints Commission.

Given the Committee's findings, and the broader issues facing the media at the time, this was an area that could have been the topic of a public inquiry. The Committee's report was published in February 2010. In light of the report, then Prime Minister Gordon Brown sought to launch a public inquiry under the Inquires Act 2005 (HC Deb, 14 July 2011, col 401), but was advised against this by a cautious Cabinet Secretary (O'Donnell, undated). It is conceivable that, had Brown launched that public inquiry, there may well have been little role for the Committee other than to co-operate with it where necessary.

In the event, the Leveson Inquiry was set up in July 2011, but by then, the *New York Times* had published further allegations causing the Metropolitan Police to re-open its own inquiry and Chris Bryant, during an adjournment debate, accused John Yates of misleading the Committee when giving evidence in 2009 (Van Natta Jr, Becker and Bowley, 2010; HC Deb, 10 March 2011 col 1171). This prompted Yates to give further evidence. The alleged hacking of murdered schoolgirl Milly Dowler's phone, the closure by News International of the *News of the World*, and an admission from James Murdoch that executives from the paper had previously given evidence to the Committee 'without being in the full possession of the facts' meant that, in the Committee's view, it had become 'inevitable and imperative' for it to re-open its inquiry (Culture, Media and Sport Committee, 2011, para 4). In short, a select committee sought to use its enhanced status in the 2010 Parliament to fill the accountability gap left by the lack of a public inquiry. The result, in a situation that was not wholly under the control of the Committee, was the first of the type I have designated as a "topical inquiry".

This new inquiry, the third into phone-hacking, was ostensibly an investigation into whether the Committee had previously been misled by witnesses in its 2010 inquiry. The Committee felt that answering this question required 'a detailed understanding of the scope and implications of a number of documents and events' (ibid, para 12). This was effectively a Trojan horse, enabling the Committee to investigate the corporate governance of News International and suspicions that the scale of phone-hacking had been covered up. The Committee's report went as far as stating that 'Rupert Murdoch was not a fit person to exercise the stewardship of a major international company' (ibid, para 229), a conclusion not necessarily congruent with the Committee's own intention to ascertain whether it had previously been misled, or even SO No 152 itself.[2]

The Committee found that Les Hinton, Tom Crone and Colin Myler had all previously misled it. The Committee also found that it had been misled 'corporately' by the *News of the World* and News International. After reporting a complaint of contempt back to the House, the matter was referred to the Privileges Committee, which, after suspending its inquiry for several years pending the resolution of several criminal prosecutions, found Crone and Myler guilty of contempt, for which they were admonished by the House of Commons (Committee

[2] Though arguably, as it was the duty of Ofcom to determine such matters, it could be said to fall within the duty to scrutinise 'associated public bodies'.

of Privileges, 2016, para 321).[3] The issue of sanctions is discussed in Section 5 below.

3.2. *BHS*

Although the Culture, Media and Sport Committee maximised the scope of its inquiry which led it to question Rupert Murdoch, it was aware of the need to avoid duplicating inquiries that were ongoing by the police and the Leveson Inquiry. The relationship between a topical inquiry and other inquiries was an underlying issue with the Work and Pensions and Business, Innovation and Skills Committees' ('the Committees') inquiry into BHS.

In April 2016, BHS entered into administration, just over a year after being bought by Retail Acquisitions Ltd ('RAL') for £1 from Taveta (No 2), a company ultimately controlled by Sir Philip Green and his family. Green had bought BHS for £200million in 2000. During Green's period of ownership, substantial dividends had been declared, including, in 2002-04, a dividend of £423 million, of which the Green family received £307 million (Work and Pensions and Business, Innovation and Skills Committees, 2016, para 9). The suspicion was that the dividends had reduced the funds available for investment or the pensions funds which at that stage, were in surplus. When BHS was sold in 2014, turnover was flat, its balance sheet was weakened by sale and lease-back arrangements (ibid, para 16), and its pension schemes had a £345 million deficit (ibid, para 19, Table 2). The collapse of BHS was a particular embarrassment to Sir Philip Green, a high-profile but maverick retailer Topshop business has collaborated with Beyoncé, Naomi Campbell, and other celebrities.

The difficulty for the Committees was that the Pensions Regulator, the Financial Reporting Council, the Insolvency Service, and the Serious Fraud Office were all conducting their own investigations into BHS. It is difficult to conduct an ordinary policy inquiry and to make recommendations for change when it could not be known how effective existing policy would be. Consequently, the Committees conducted a fact-finding inquiry into Green's ownership and sale of BHS.

The Committees concluded that the 'massive pension deficit' was 'ultimately Sir Philip Green's

[3] Initially, the House referred the complaint to the Privileges and Standards Committee, but these split in 2013, to allow lay members to sit on the new Standards Committee. The complaint of contempt was then taken up by the new House of Commons Privileges Committee.

responsibility' (ibid, para 25), that he had shown an 'unwillingness to act to secure the pension funds' future' (ibid, para 35), and was 'disingenuous', when explaining the sale to RAL (ibid, para 66). The Committees considered that they 'found little evidence to support the reputation for retail business acumen for which he received his knighthood' (ibid, para 172). Dominic Chappell and the other directors RAL also came in for serious criticism (ibid, paras 51, 131, 160 and 171).

The immediate impact of the Committees' report was to damage Sir Philip Green's reputation. The House of Commons subsequently approved an amendment to a motion demanding the restitution of the BHS pension fund deficit and to strip Sir Philip Green of his knighthood. During the debate members of the Committees were clear that they were holding Sir Philip Green and others to account morally rather than legally. Frank Field, the Chair of the Work and Pensions Committee made it clear that Sir Philip Green was subject to a 'mega, mega, mega-moral responsibility' to address the pension deficit (HC Debs, 20 October 2016, col 985). The knighthood has not yet been rescinded.

Given the lack of a policy context, expecting private individuals, acting in the private sphere to morally account for their actions is not within the scope of SO No 152. Any substantive impact the report had was not immediate, as it was six months later, after the threat of litigation from the Pensions Regulator, that caused Sir Philip Green to contribute £363 million to shore up the BHS pension schemes (Peachey, 2017). Given that Green has made no public statement, it is difficult to establish how much weight he gave to the Committee's report when deciding to make this contribution. Although clearly, the inquiry formed a major part of the public pressure on Green to settle with the regulator.

An alternative, perhaps more traditional approach, would have allowed the Pensions Regulator to conduct its inquiry, and then scrutinised the conclusions of that inquiry to determine where policy needed to be changed. As it was, the investigation and legal process secured a positive result. In holding the inquiry when they did, the Committees implicitly showed a lack of confidence in the regulator and sought the opportunity, in front of the television cameras, to scrutinise and criticise Sir Philip Green and others directly.

3.3. Employment Practices at Sports Direct

A week before Sir Philip Green gave evidence, the Business, Innovation and Skills Committee heard oral evidence from Mike Ashley, the majority shareholder in Sports Direct. Media reports had highlighted serious concerns about employment practices within Sports Direct. Described as 'Victorian', a freedom of information request by the BBC revealed that ambulances were frequently called to a Sports Direct warehouse, workers risked summary dismissal for breaches of minor rules, and workers were not being paid the minimum wage. There was also a widespread use of zero-hours contracts and most workers were employed via an agency (Business, Innovation and Skills Committee, 2016, paras 1 and 2).

In December 2015, Ashley announced a review into working conditions within Sports Direct. Ashley was first invited to give evidence in January 2016, but arguments over the Committee's powers to secure his attendance delayed his appearance until June 2016, before which Ashley gave two days' notice of his attendance (ibid, para 9). At the hearing, Ashley did not try to defend these practices, admitting that many were unacceptable. The Committee described the hearing as 'a very constructive exchange of views, which has resulted in welcome commitments by Mr Ashley to achieve real change' (ibid).

This inquiry could have had the same drawbacks as the BHS inquiry. However, there was no clear equivalent of The Pensions Regulator or the Insolvency Service that would have been able to have taken these allegations in the round and challenged senior executives within the company. By the time Ashley gave evidence in June 2016, it was six months into his own review but, nevertheless, the inquiry maintained the pressure on Ashley and Sports Direct to change.

Although the outcome may be judged more positive than that of the BHS inquiry, the core question of the scope of the Committee's remit under SO No 152 remains. There was no scrutiny of a government department or an agency, or policy discussion. The closest the Committee got was to encourage the Gangmasters Licensing Authority and the Health and Safety Executive to investigate Sports Direct. Moves the Committee made to consider the more general policy implications of Sports Direct's business model were cut short by the dissolution of Parliament for the 2017 General Election (ibid, para 76).

3.4. *Combatting Doping in Sport*

The fact-finding nature of topical inquiries carries a risk that, having attracted significant attention examining witnesses giving oral evidence, a committee feels obligation to strengthen their criticisms of witnesses in order to justify their inquiry. In turn, this can lead to conclusions based on a partial use of evidence a committee receives. The (by now) renamed Digital, Culture, Media and Sport Committee's inquiry *Combating Doping in Sport,* could be an example of this dynamic (Digital, Culture, Media and Sport, 2018a). Within the scope of SO No 152, the inquiry was barely focused on policy, only briefly considering the criminalisation of doping, and the funding of UK Anti-Doping, the non-departmental public body, responsible for enforcing the UK Anti-Doping Code. Instead, in response to media reports, the Committee's attention was focused on investigating allegations of wrongdoing by individuals, teams and governing bodies within cycling and athletics. Many of the Committee's conclusions could be challenged on available evidence.

3.4.1. IAAF

Within athletics, the Committee considered allegations made by the Sunday Times, and the German broadcaster ARD, that between 2001 and 2012, the international governing body for athletics, the IAAF, had failed to adequately follow up suspicious results based on an athlete's blood passport, in particular that no sanction was imposed on any athlete based on their passport prior to 2009. Lord Coe, then an IAAF Vice President, described the allegations as 'a declaration of war', and the IAAF disputed these allegations in a detailed 38-page response (The Guardian, 2015; IAAF, 2015). The Committee concluded that the dispute revolved around 'whether the IAAF should have been more proactive in following up results', and that 'great damage may be done to a sport when its governing body fails to take action against doping' (Digital, Culture, Media and Sport, 2018a, para 20). However, the report does not mention that the Independent Commission, asked by World Anti-Doping Agency ('WADA') to consider these allegations, concluded that the IAAF's response was 'scientifically sound' (WADA, 2016, p 78), and the claim that sanctions could have been imposed on the basis of a suspicious passport before 2009 was 'incorrect' (ibid, p 71), as it was only confirmed as legally viable in 2011 (ibid, p 81). Overall the Commission concluded that the IAAF's response to suspicious passports was thorough and reasonable in the circumstances (ibid, p 57).

3.4.2. Lord Coe

ARD also broadcast allegations of broader, widespread and state-sponsored doping within Russian athletics, claiming that this was facilitated by corruption within the IAAF, that was linked to its president, Lamine Diack (ibid, p 4). In particular, Russian marathon runner, Liliya Shobukhova, was asked in 2009 to pay €450,000 to company connected to Diack's son to cover up her doping offence. This became public after Shobukhova's participation at the London 2012 Olympic Games. By April 2014, an official helped Shobukhova's agent send a complaint to the IAAF's Ethics Committee, chaired by Sir Michael Beloff QC.

In December 2015, Lord Coe gave evidence to the Committee regarding blood-doping, stating that he was broadly aware of issues in relation to blood doping in athletics, but was unaware of the scale or the level of corruption within the IAAF and Russian athletics (Digital, Culture, Media and Sport Committee, 2018a, paras 32-33). BBC's Panorama programme, 'Seb Coe and the Corruption Scandal', called into doubt Lord Coe's evidence (BBC, 2016). In August 2014, David Bedford, the organiser of the London Marathon, had forwarded documents to Lord Coe, detailing the Shubukhova scandal. Lord Coe stated that he forwarded the documents on to Beloff without opening or reading them. The Committee considered that Lord Coe's evidence was misleading, and that it 'stretches credibility to believe that he was not aware, at least in general terms, of the main allegations' referred to the Ethics Committee' (Digital, Culture, Media and Sport Committee, 2018a, para 45). However, the Committee did not refer to Beloff's response, in which he stated that Lord Coe, in forwarding the documents 'would be fulfilling your own duty in sending it to me' (Digital, Culture, Media and Sport Committee, 2018b). Referring to this would clearly have weakened the Committee's conclusion regarding Lord Coe. The IAAF's own investigation has since concluded that Coe followed the correct procedure and did not breach the IAAF's Code of Ethics (IAAF Ethics Board, 2019).

3.4.3. British Cycling and Sir Bradley Wiggins

If a topical inquiry seeks to respond to news events, there is a risk that the inquiry lacks an inherent consistency and could potentially confuse or equate different issues. After considering athletics, the Committee sought to consider how 'some of the same issues' had been addressed in cycling, in light of disclosures made by Fancy Bear, the hacking group, relating to the use of Therapeutic Use Exemptions (TUEs) (Digital, Culture, Media and Sport Committee, 2018a, para 61). A TUE allows an athlete to take a substance which would

otherwise be banned for medical reasons. This shows how the issues in Russian athletics and cycling fundamentally different. The corruption within Russian athletics sought to undermine the anti-doping movement, whereas TUEs delineate which substances are legal (and in what circumstances) when from what is illegal.

The Committee chose to investigate Sir Bradley Wiggins's and Team Sky's use of Triamcinolone for asthma, for which he had a TUE from 21 June 2011. In particular, there had been controversy over a treatment Wiggins received at the end of the Criterium du Dauphiné on 12 June 2011. An investigation from UK Anti-Doping had proved inconclusive as to whether the treatment was Triamcinolone, which would have been illegal as the TUE had yet to take effect, or Fluimucil which was legal. Team Sky's own inquiry established that it was Fluimucil, but there were no records to prove this conclusively. This absence of records is in breach of General Medical Council Guidelines.

Given that the Committee's conclusions, like UK Anti Doping's, were also inconclusive, it is difficult to understand what was gained by this line of inquiry. Potentially this was also at the expense of more typical policy inquiry. In evidence cited by the Committee, the number of TUEs has been increasing, and experts 'believe the system is open to abuse and that a review ought to be conducted' (ibid, para 63). The suspicion is that athletes obtain TUEs in order to take substances for their performance enhancing qualities, rather than for medical purposes. Taking Triamcinolone as an example, its use for asthma is highly unusual, but has recognised endurance-enhancing effects. This could have formed the basis of an interesting policy inquiry, looking at where the WADA Code, and its enforcement, requires improvement. It could have had a significant impact on sport, but the Committee missed this opportunity by instead, following lines of inquiry triggered by headlines. This shows how topical inquiries can distort committee purposes and distract them from more profitable and purposeful lines of inquiry.

4. Evaluating the Topical Inquiry

From the four examples discussed above, this section seeks to draw together some common features and consider whether these topical inquiries are a desirable function for committees.

4.1. Self-Regulatory Contexts

A common feature of the four inquiries considered is that they took place within different contexts of self-regulation. This clearly applied to the phone-hacking inquiry. With anti-doping, on the other hand, the position is more complex. Governing bodies of sport, as private companies, are not subject to direct control by the state. The World Anti-Doping Code is incorporated into the rules and regulations of sports and their competitions through contracts entered into between athletes, clubs, leagues, and the governing bodies themselves.[4] This is subject to ordinary contract law. In the UK, these contracts refer to UK Anti-Doping, a non-departmental public body sponsored by the Department for Culture, Media and Sport, enabling them to conduct testing. This ensures that the UK complies with its obligations under the UNESCO International Anti-Doping Convention. Disputes within a sport, such as a challenge to a sporting ban, are initially considered within the governing bodies' own processes, or, if necessary, by arbitration. Disputes are resolved via the National Anti-Doping Panel (run privately by Sports Resolutions Ltd). Onward appeals are made to the Court of Arbitration for Sport, based in Switzerland.

With Sports Direct and BHS, the common feature was a majority shareholding by those who effectively ran the company, Mike Ashley and Sir Philip Green respectively. This meant the basic principle of corporate governance, that the management are accountable to shareholders was significantly weakened. The Committee found that BHS, although owned via the Taveta group, was 'run as a personal fiefdom by a single dominant individual' (Work and Pensions and Business, Innovation and Skills Committees, 2016, para 169).

4.2. Accountability Gap

Lack of such checks as real shareholder or board accountability in a private enterprise may be a necessary but not sufficient condition for an effective inquiry of this nature. The sufficient condition is an 'accountability gap', where such a deficit is not remedied by an effective (not merely performative) self-regulatory or statutory regulatory regime. This ingredient distinguishes the phone-hacking and Sports Direct from the Anti-Doping and BHS inquiries. With phone-hacking, it is clear that self-regulation of the press had failed, and the police and

[4] See *Modhal v British Athletic Federation (No 2)* [2001] EWCA Civ 1447.

the Information Commissioner also fell short. To some extent, the Culture, Media and Sport Committee's investigation (and, perhaps belatedly, the Leveson Inquiry) filled this gap. A similar argument applies to the Sports Direct inquiry, in that no other accountability mechanism available had the capacity to consider the range of allegations in the round. For example, the Health and Safety Executive could not have considered the allegation that workers were being paid less than the minimum wage.

This 'accountability gap' requirement is more difficult to sustain when examining the BHS and anti-doping inquiries. With BHS, the Committee's inquiry ran parallel to ongoing inquiries run by the Insolvency Service, the Pension Service, and the Financial Reporting Council. It was the threat of litigation from the Pension Service, not the Committee's report, that ultimately led to Sir Philip Green making a contribution to secure the BHS pension fund. Given that Parliament, through legislation had empowered those bodies to undertake those investigations, it may seem difficult to justify Parliament conducting its own inquiry, particularly while other inquiries were ongoing. In its defence, the Work and Pensions Committee could argue that it was the pusillanimity and dilatoriness of the regulator that they were addressing as much as the actions of BHS. Perhaps the Committee's inquiry put sufficient backbone into the regulator to act.

As regards to blood doping, the IAAF was accountable to WADA, who convened an independent commission to consider the issues. The evidence showed that Lord Coe, as a Vice-President, had fulfilled his duties to the IAAF Ethics Board, chaired independently by Sir Michael Beloff QC. With British Cycling, a UK Anti-Doping inquiry had already been undertaken, which was inconclusive. Similarly, athletes such as Sir Bradley Wiggins are accountable under the WADA Code, which identifies what is and is not a doping offence. It seems unfair for the Committee to effectively subvert the Code, and publicly engage in guilt by association, when the underlying policy issue was the use of TUE's under the WADA Code.

4.3. Summary

The Phone-hacking inquiry, and the Sports Direct inquiry showed the value of select committees having a residual jurisdiction to conduct an *ad-hoc*, topical inquiry. The subject matter is likely to be within a self-regulatory context and when other accountability

mechanisms are either unsuitable, or there is evidence that they have failed. Attaching these conditions to such topical inquiries should restrain this development, as inquiries of this nature will be irregular and unusual. This would ensure that the focus of select committees remains principally on government departments and agencies, where it belongs.

It is the accountability gap that justifies the intervention of a select committee. Committees, empowered by SO No 152, are able to scrutinise government departments and agencies. If a scandal or wrongdoing involves private power, and self-regulation has failed or does not adequately exist, then Parliament and elected representatives should have the ability to consider matters of public concern. This ensures that Parliament fulfils its core function as captured by Leo Amery, of ensuring the 'full discussion and ventilation of all matters' (Amery, 1947, 12). A committee, with the enhanced authority following the reforms introduced in 2010, is able to conduct the fact-finding exercise and exercise the necessary scrutiny that the main chamber simply cannot. If pre-existing accountability mechanisms are yet to be concluded then, unless it is clear that the regulatory authorities are failing in their duty to act, there is no accountability gap making it harder to justify a topical inquiry. A committee could always conduct a more typical policy inquiry afterwards.

5. Regulating the Topical Inquiry: Check Your Privilege

The four topical inquiries discussed above were, like all other inquiries, conducted under the benefit of parliamentary privilege. This is principally guaranteed by the Bill of Rights 1689, Article 9, which states;

> *That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.*

A related, and broader doctrine is that the lawfulness of the procedures of each House falls within their exclusive cognisance and is not a matter for the courts. A specific statutory protection is afforded to any material published by order of the House of Commons under the Parliamentary Papers Act 1840, meaning such material cannot be used as evidence in any criminal or civil proceedings. As shown by the BHS inquiry, taken together these protections

and immunities mean that a committee can comment on the personal character and abilities of witnesses, potentially causing reputational damage, without the risk of a legal challenge. However, topical inquires raise questions about what limits there may be on how committees use their powers and what sanctions there are against those who defy them, as well as about the extent to which the courts may question those privileges if they judge that committees have abused their powers and immunities.[5]

5.1. Powers

Under SO No 152(4), committees have the power to send for 'persons, papers and records'. *Erskine May* states that the power to send for persons is 'unqualified', and there are 'no restrictions' in the case of papers and records held by private bodies or individuals (*Erskine May*, paras 38.33 and 38.32). Usually, committees seek written evidence and invite witnesses to give oral evidence on a largely informal basis through announcements on their website and direct invitation. Yet with the four topical inquires discussed, some witnesses have been reluctant to co-operate with the committee. If the initial invitation is rebuffed, then the witness can be informed of the committee's power to summon, then if necessary, the chair of the committee will issue the summons on an order of the committee. This was the case with Rupert and James Murdoch and Sir Philip Green. As regards papers and records, a committee can order the disclosure of certain documents. This power was recently exercised by the Digital, Culture, Media and Sport Committee, when Ted Kramer, a US citizen staying in London, was required to disclose documents sealed by a Californian court. As the legal action was not taking place in UK courts, this information was not protected by the House's own *sub-judice* rule, although the Californian court is pursuing the matter and has ordered the attendance of the Chair of the Committee to explain its behaviour (Kennon, 2018).

Given the fact-finding nature of topical inquiries, a specific issue is the power of a committee to insist that witnesses answer their questions. *Erskine May* suggests that witnesses are required to answer all questions regardless of the risk of self-incrimination, the risk of civil action, or breach of legal professional privilege (*Erskine May*, para 38.36). In the context of a

[5] In *Kerins v McGuinness and Others*, [2019] IESC 42, para 6.3, the Irish Supreme Court concluded that the Public Account Committee of the Dáil Éireann acted unlawfully in conducting a public hearing that was 'significantly outside its terms of reference' and 'departed significantly from the terms of [the] invitation' that requested the attendance of a citizen.

witness giving oral evidence on live television, avoiding questions, for whatever reason, invites viewers and the media to draw their own conclusions, inherently risking their reputation. Given the extent of their powers, witnesses are reliant on the restraint of the committee not to place them in that situation. For example, during the Phone-hacking inquiry, the Committee exercised care not to cover matters subject to ongoing police investigation.

The Privy Council in *Prebble v Television New Zealand* [1995] 1 AC 321, at 334 confirmed that Article 9 protects witnesses against legal action for evidence they give before committees (see also *Erskine May*, 2019, para 38.61). This principle underpinned *Makudi v Triesman* [2014] EWCA Civ 179, which held that when a witness, in the public interest, repeats what they had previously said before a committee, and there was 'so close a nexus between the occasions of his speaking, in and then out of Parliament', then they are protected by Article 9 against a claim for defamation and malicious falsehood (*Makudi v Triesman*, para 25). Given the fact-finding nature of topical inquiries, it is simple to envisage circumstances where a witness, perhaps a whistle-blower, might be required to repeat statements before another disciplinary or accountability procedure.

One difficulty is when witnesses are punished as result of their evidence. For example, in the CAFCASS (Children and Family Courts Advisory and Support Service) case, a board member criticised the organisation in written evidence they sent to a committee. The Lord Chancellor then removed her from the board for not behaving in a 'corporate manner'. The Standards and Privileges Committee found that the Lord Chancellor and officials who investigated the board member's evidence had committed a contempt of Parliament (Standards and Privileges Committee, 2004). Gay and Tomlinson, consider that the case showed 'widespread ignorance of the principles of Article 9 (even on the part of a legally qualified Lord Chancellor) and its implications for witnesses across the public sector' (Gay and Tomlinson, 2013, pp 44-45). Arguably, these dangers are far worse for witnesses from the private sector, the focus of topical inquires. If a court were to allow proceedings to be taken against a witness on account of what they had said to a committee, the witness is protected only to the extent that the House is prepared to intervene to protect its privileges and the courts are prepared to concede them.[6]

[6] Some protection is also offered by the Witnesses (Public Inquiries) Protection Act 1892 which provides at s 2

5.2. Enforcement

How far Parliament can go in enforcing its privileges against others is uncertain. This became an issue with the Phone-Hacking inquiry, with the committee finding that some witnesses had misled it. The Commons referred the matter to the Standards and Privileges Committee (HC Deb, 22 May 2012, cols 990-1014). The Committee made clear that the only possible sanction it would recommend was admonishment, given that the House had previously decided to exercise its penal jurisdiction 'as sparingly as possible' and the power to fine and power to imprison were last exercised in 1666 and 1880 respectively (Select Committee on Parliamentary Privilege, 1977, paras 4, 41, 35; Joint Committee on Parliamentary Privilege, 2013). When the compliant of contempt was upheld against two witnesses, instead of being called to the Bar of the House to be admonished in person by the Speaker (as last happened in 1957), the admonishment was delivered by a resolution of the House in their absence.

Yet, the practical effect of an admonishment is disputed. Lord Nicholls suggested that it would not cause the recipient the 'loss of a wink's sleep' (Standards and Privileges Committee, 2011, para 59). Indeed, the admonishment of Dominic Cummings for being in contempt for not giving evidence to the Digital, Culture, Media and Sport Committee's inquiry into 'fake-news' arguably advanced his populist credentials as someone challenging the establishment and did not prevent his appointment as an advisor to Boris Johnson at Downing Street. In other contexts, as Leader of the House, David Lidington explained, being described as 'having a committed a contempt of Parliament … can cause reputational damage to the individual and also cause commercial damage to the organisations they represent' (HC Deb, 27 October 2016, col 985). Much will depend on the specifics of any given case.

The difficulty is that the more onerous the sanction, the greater the requirement for committees, in particular the Privileges Committee to meet general standards of procedural fairness. Consequently, the Privileges Committee has adopted a more robust procedure to deal with complaints of contempt. When considering the complaints from the Phone-hacking inquiry, it took written evidence, oral evidence under oath, to which witnesses could be

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that anyone who 'punishes, damnifies, or injures' any person for giving evidence to an inquiry (or attempts to) shall be guilty of an offence, with a maximum penalty of £100 or three months imprisonment. Section 1 makes clear that 'inquiry' includes an inquiry held 'by any committee of either House of Parliament. There is no record of any prosecution under the Act.

accompanied by a legal or other adviser (although the witness must still answer). Importantly, witnesses received a warning letter if the Committee intended to criticise them, with a right to respond to the criticism (Committee of Privileges, 2016, p 135). This is a similar process to public inquiries. Much of the motivation behind limiting the penal of the powers of the House, and the fairer process by which sanctions may be imposed, is to reduce the likelihood of any challenge on human rights grounds.

5.3. Challenging the Findings of a Topical Inquiry

Topical inquiries bring a more serious risk. An aggrieved witness, who suffers reputational damage as a result of a committee's findings in a topical inquiry, may seek to bring a substantive challenge. Reputational damage can give rise to an action under Article 8 ECHR, and it has been debated as to whether this extends to corporations (Oliver, 2015, p 315; Acheson, 2018).[7] *Prima facie,* it would appear that Article 9 and exclusive cognisance ensure that any challenge would be unsuccessful. Following the BHS report, counsel for Sir Philip Green, which included Lord Pannick QC, argued that this was the only impediment to them bringing an action (Taveta Investments Ltd, 2016). Article 8 ECHR brings different challenges.

A v UK (2003) 36 EHRR 51 established the principle that parliamentary privilege is subject to the requirements of proportionality when considering Article 6 ECHR, which also applied to Article 8 ECHR. Although the margin of appreciation is likely to be broad, the proportionality test in an Article 8 context could be more intensive as it raises substantive, rather than merely procedural questions. In *A v UK* the challenge related to an MP who named a family as "neighbours from hell" during a debate in the chamber. This was clearly a proceeding in Parliament and done in the course of what was an orderly debate.

With topical inquiries it may be argued by a plaintiff that the reputational damage was caused by a select committee acting outside the terms of reference set out in its Standing Orders. In these circumstances, the apparently absolute prohibition against challenging proceedings in Parliament would require greater justification, as there is a less restrictive alternative, which is that the Standing Orders should be enforced within Parliament. An Article 8 ECHR challenge

[7] The application Article 8 to a company was 'assumed' in *Firma EDV für Sie v Germany, App No, 32783/08 (ECHR, 2 September 2014).*

will also encompass the questions raised by an Article 6 ECHR. Adopting fairer procedures, would be likely to interfere with individual rights to a lesser extent. In this context, the right to reply is particularly important.

The fact that enhanced procedures have been adopted by the Privileges Committee, shows that fairer procedures are possible, raising the question as to why these procedures are not required for a topical inquiry. Indeed, Mike Ashley was accompanied by an adviser before the committee. This is particularly the case when a committee's conclusions, as has been shown, were intended to and do cause reputational damage. As David Lidington explained, this is the same intention as the Privileges Committee followed when it recommended an admonishment when upholding a complaint of contempt. The more topical inquiries that are conducted, the greater the risk of legal challenge.

6. Reforms

Topical inquiries bring three questions about the powers and privileges of Parliament to the fore: to what extent should the immunity offered to committees allow them to make potentially damaging findings about private individuals or firms without risk of legal reprisals; to what extent should committees be able to compel evidence from such individuals and organisations; and what powers should committees enjoy in order to compel private individuals and bodies to co-operate in such inquiries. The debate appears to have settled into three options: (1) do nothing; (2) amend the standing orders; or (3) enact legislation. If, there is a role for the topical inquiries, then given the difficulties raised in the previous section, doing nothing is not an option. SO No 152 needs to be amended so that its scope encompasses topical inquiries, with further provisions underpinning the fairer procedures such an inquiry would follow, borrowing from the Privileges Committee. This would increase the likelihood of withstanding a legal challenge more generally, especially one based on Article 8 ECHR.[8] This would be broadly consistent with the Liaison Committee's proposal to lay out more clearly the powers of committees (Liaison Committee, 2012, paras 133-134).

[8] The amended standing order could either identify a topical inquiry as a special category of inquiry, to which these new procedures would apply, or it could be drafted more generally, with the procedures available for all types of inquiry, but applying when only conducting a topical inquiry.

Another option, forming part of the broader debate on whether privilege should be codified in statute but addressed to the particular issue of recalcitrant witnesses, is to create statutory powers to impose sanctions beyond an admonishment, such as a fine. It would need to be decided whether the courts or Parliament itself would impose and enforce these sanctions. Whichever option is chosen, the risk for committees is that the courts would be required to conclusively interpret the legislation and, as was the case with the Irish Public Accounts Committee, would do so in a way which tended to restrict their freedom of manoeuvre.[9] This risk would be heightened if a statute that made it a specific criminal offence to give false evidence or fail to attend, as the courts would be required to enforce it.[10] An alternative is, as Gordon and Street suggest, a new extra-Parliamentary authority, such as a 'Commissioner for Select Committee Appeals' that could hear appeals or reviews against select committee procedures (Gordon and Street, 2012). The attraction of this is that the statutory authority, not Parliament, would be subject to judicial review. Clearly the courts would, indirectly, be considering the procedures of committees, but the courts would be doing so expressly on the basis of statute rather than questioning the scope of privilege more generally.

The only way to conduct a topical inquiry with significant penal powers, without any risk to parliamentary privilege is to remove it from Parliament entirely. The Inquiries Act 2005 already provides for this. Indeed, this makes explicit an issue that has been implicit throughout this discussion. Section 1 of the Act makes clear that public inquiries are launched to investigate matters of public concern, and to do this they have the power to establish the facts, determine accountability and make recommendations for policy change (House of Lords Select Committee on the Inquiries Act 2005, 2014, para 9). The procedures are well established, yet flexible, and post legislative scrutiny has concluded that the Act 'constitutes a good framework' (ibid, para 300).

The question is whether the template of the public inquiry could be adapted to bring the benefits of the more streamlined and timely nature of topical inquiries. As it is, there is nothing to preclude an MP from sitting on a public inquiry,[11] and outside experts can be

[9] See note 5 above.
[10] Although technically this is already the case under a combination of the Parliamentary Witnesses Oaths Act 1871 and the Perjury Act 1911 in the case of evidence taken under oath.
[11] Although not established under the Inquires Act 2005, the Butler Review included two MPs, Ann Taylor and Michael Mates.

appointed as assessors under Section 11 of the Act. Separating the topical inquiry from committees in this way, would ensure that they remained focused on the policy issues relevant to their government department rather than resembling Lord Lisvane's 'posse'.

To achieve this, the government would need to surrender to Parliament its almost total control on whether to hold a public inquiry and its terms of remit. Parliament would need to have a much greater say on both of these issues. It was this lack of parliamentary control that prevented a public inquiry from being held into phone-hacking in 2010. The Culture, Media and Sport Committee filled this vacuum, and laid the paths for others to follow. The issue is now, how well-worn will that path become?

7. Conclusion

Select committees have used their enhanced legitimacy to fill an accountability vacuum, through conducting a new type of inquiry – the 'topical inquiry'. Compared to more typical policy led inquiries, these are primarily fact-finding investigations. A key feature is that they involve obtaining evidence from high profile individuals. The most effective topical inquiries have investigated allegations of wrong-doing within a self-governing context, and when no other accountability procedure is available. A difficulty with topical inquiries is that the Standing Orders do not explicitly provide for them when setting out the remit of committees. This increases the risk of a legal challenge against a select committee on human rights grounds, especially under Article 8 ECHR. Consequently, the Standing Orders need to be amended to provide for topical inquiries and set out fairer procedures for witnesses who may face criticism in the report. Alternatively, a streamlined version of a public inquiry held under statute would remove the matter from Parliament.

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Bibliography

A v UK (2003) 36 EHRR 51.

Acheson, D. (2018) 'Corporate reputation under the European Convention of Human Rights' *Journal of Media Law*, **10**, 49-76.

Amery, L.S. (1947) *Thoughts on the Constitution,* London, Oxford University Press.

BBC. (2011, 19 July) '*Daily Politics – Special'* – details accessed at https://www.bbc.co.uk/programmes/b012zw12, on 1st August 2019.

BBC. (2016, 16 June), '*Panorama - Seb Coe and the Corruption Scandal*' details accessed at https://www.bbc.co.uk/programmes/b07gy406 on 1st August 2019.

Benton, M. and Russell, M. (2013) 'Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons' *Parliamentary Affairs*, **66**, 772- Parliamentary Affairs 772-797.

Bill of Rights 1689.

Business, Innovation and Skills Committee (2016) *Employment Practices at Sports Direct.* HC 219, 2016-17, London, House of Commons.

Committee of Privileges (2016) *Conduct of witnesses before a select committee: Mr Colin Myler, Mr Tom Crone, Mr Les Hinton and News International.* HC 662, 2016-17, London, House of Commons.

Culture, Media and Sport Committee (2007a) *Self-regulation of the press.* HC 375, 2006-07, London, House of Commons.

Culture, Media and Sport Committee (2007b) *Self-regulation of the press - Replies to the Committee's Seventh Report of Session 2006-07,* HC 1041, 2006-07, London, House of Commons.

Culture Media and Sport Committee (2010) *Press standards privacy and libel.* HC 362-I, 2009-10, London, House of Commons.

Culture, Media and Sport Committee (2011) *News International and Phone-hacking.* HC 903-I, 2010-12, London, House of Commons.

D'Arcy, M. (2011, 28 July). 'Time to salute the post-2010 election Parliament', BBC News, accessed at https://www.bbc.co.uk/news/uk-politics-14330865, on 1st August 2019.

Davies, N. (2009, 8 July) 'Revealed: Murdoch's £1m bill for hiding dirty tricks', *The Guardian,* London.

Digital, Culture, Media and Sport Committee (2018a) *Combatting doping in sport.* HC 366, 2017-19, London, House of Commons.

Digital, Culture, Media and Sport Committee (2018b), Email exchange between Sir Michael Beloff and Sebastian Coe, (14th and 16th August 2014) accessed at https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Evidence/Michael-Bellof-Sebastian-Coe-emails-re-David-Bedford-allegations-August-2014.pdf on 1st August 2019.

Erskine May's Parliamentary Practice (2019), 25th edition, accessed at

https://erskinemay.parliament.uk on 1st August 2019.

European Convention of Human Rights.

Firma EDV für Sie v Germany, App No, 32783/08 (ECHR, 2 September 2014).

Flinders, M. and Kelso, A. (2011). 'Mind the Gap: Political Analysis, Public Expectations and the Parliamentary Decline Thesis' (2011) *British Journal of Politics and International Relations,* **13**, 249–268.

Gay, O. and Tomlinson, H. (2013). 'Privilege and Freedom of Speech', in Horne, A., Drewry, G. and Oliver, D. (eds), *Parliament and the Law,* Oxford, Hart, pp 35-65.

Gordon, R. and Street, A. (2012), 'Select Committees and Coercive Powers', London, Constitution Society.

The Guardian (2015, 4 August), 'Lord Coe: allegations against IAAF are declarations of war on my sport', accessed at https://www.theguardian.com/sport/2015/aug/04/lord-coe-allegations-iaaf-drug-testing on 1st August 2019.

House of Commons (2018), *Standing Orders – Public Business 2018,* HC 1020, 2017-19. Accessed at https://www.publications.parliament.uk/pa/cm201719/cmstords/1020/so_1020_180501.pdf on 1st August 2019.

House of Commons Reform Committee (2008) *Rebuilding the House,* HC 1117, 2008-09, London, House of Commons.

House of Lords Select Committee on the *Inquiries* Act 2005 (2014) *The Inquiries Act 2005: post legislative scrutiny,* HL 143, 2013-14, London, House of Lords.

IAAF (2015) 'Blood-testing 2001-2012: IAAF's Response to Allegations of Blood Doping In Athletics', accessed at http://www.iaaf.org/download/download?filename=e07852d9-7ae6-4452-96d0-e0924baf6940.pdf&urlslug=%20IAAF%20blood-testing%202001-2012%3A%20IAAF's%20response%20to%20allegations%20of%20blood%20doping%20in%20athletics on 1st August 2019.

IAAF Ethics Board. (2019) 'Notice of Closure of Investigation – 11th April 2019', accessed at https://www.iaafethicsboard.org/Download/download?filename=2d34253f-2bcb-45fe-8653-4cba5f5aa8b7.pdf&urlslug=Ethics%20Board%20–%20Notice%20of%20Closure%20of%20Investigation%20–%2011%20April%202019 on 1st August 2019.

Inquiries Act 2005.

Joint Committee on Parliamentary Privilege (2013), *Report of Session 2013-14*, HL 30, HC 100, 2013-14, London, House of Commons.

Kennon, A. (2018, 27 November). 'The DCMS Committee, Facebook, and parliamentary powers and privilege', Hansard Society, accessed at https://www.hansardsociety.org.uk/blog/the-dcms-committee-facebook-and-parliamentary-powers-and-privilege on 1st August 2019 **.**

Kerins v McGuinness and Others [2019] IESC 42.

Liaison Committee (2012) *Select committee effectiveness, resources and powers*, (HC 697, 2010-12) para 13.

Lisvane, Lord. (2016) 'The courts and parliament', *Public Law*, **2016,** 272-84.

Maer, L., Gay, O., Kelly, R. (2009, 15 June) 'The Departmental Select Committee System', Research Paper, 09/55, House of Commons Library, accessed at http://researchbriefings.files.parliament.uk/documents/RP09-55/RP09-55.pdf on 1st August 2019.

Makudi v Triesman [2014] EWCA Civ 179.

Modhal v British Athletic Federation (No 2) [2001] EWCA Civ 1447.

O'Donnell, G. (undated, released on 14 July 2011), 'Public Inquiries', accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60808/cabinet-secretary-advice-judicial.pdf 1st August 2019.

Oliver, P. (2015) 'Privacy and Data Protection: Rights of Economic Actors' in de Vires, S., Bernitz, U., and Weatherill, S. (eds) *The EU Charter of Fundamental Rights as a Binding Instrument: Five Years Old and Growing,* Oxford, Hart, pp 287-319.

Parliamentary Papers Act 1840.

Peachey, K.(2017, 28 February) 'Sir Philip Green strikes BHS pension deal with regulator' BBC News, accessed at https://www.bbc.co.uk/news/business-39118566 on 1st August.

Political and Constitutional Reform Committee (2013) *Revisiting Rebuilding the House: the impact of the Wright reforms,* HC 82, 2013-14, London, House of Commons.

Prebble v Television New Zealand [1995] 1 AC 321.

Russell, M., and Cowley, P. (2016) 'The Policy Power of the Westminster Parliament - The "Parliamentary State" and the Empirical Evidence', *Governance* **29** Governance 121-137.

Select Committee on Parliamentary Privilege (1977), *Recommendations of the Select Committee on Parliamentary Privilege*, HC 417, 1976-77, London, House of Commons.

Select Committee on Procedure (1978), *First Report*, HC 588, 1977-78, London, House of Commons.

Standards and Privileges Committee (2004) *Privilege: Protection of a Witness*, HC 447, 2003-04, London, House of Commons.

Standards and Privileges Committee (2011) *Privilege: Hacking of Members' mobile phones*, HC 628, 2010-12, London, House of Commons.

Taveta Investments Ltd (2016), 'Letter and Legal Opinion in Response to BHS Report' accessed at https://www.parliament.uk/documents/commons-committees/work-and-pensions/Taveta-Response-BHS-161016.pdf on 1st August 2019.

Van Natta Jr, D., Becker, J., Bowley, G. (2010, 1st September) 'Tabloid Hack Attack on Royals, and Beyond' New York Times, accessed at https://www.nytimes.com/2010/09/05/magazine/05hacking-t.html on 1st August 2019.

WADA (2016), The Independent Commission – Report #2, World Anti-Doping Agency, accessed at https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_2

_2016_en_rev.pdf on 1st August 2019.

Witnesses (Public Inquiries) Protection Act 1892.

Work and Pensions and Business, Innovation and Skills Committees (2016) *BHS*, HC 54, 2016-17, London, House of Commons.