



House of Commons
Committee of Privileges

Actions of Sussex Police

First Report of Session 2013–14



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**Actions of Sussex
Police**

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to the report*

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The Committee of Privileges

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The constitution and powers of the Committee are set out in Standing Order No. 148A. The Law Officers, if they are Members of the House, may attend and take part in the Committee's proceedings, but may not vote.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: www.parliament.uk/privileges.

Committee staff

The current staff of the Committee are Eve Samson (Clerk), Danielle Nash (Second Clerk) and Miss Christine McGrane (Committee Assistant).

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Report

Background

1. This case arises from the issue of a Police Information Notice (PIN) to Mr Tim Loughton, the honourable Member for Worthing and Shoreham on 4 September, as a result of his sending of a copy of Hansard to a constituent in the middle of March that year. This matter was referred to us by the House as a possible contempt on 9 October 2013.

2. A Police Information Notice is an “extra statutory” device developed by the police. It warns the recipient that there has been a complaint of harassment, and that, if the conduct alleged continues, action could be taken under the Protection from Harassment Act 1997. It is not a legal proceeding in itself, but the fact it has been issued could be used in subsequent proceedings relating to the alleged harassment. It demonstrates that the subject of the PIN has been warned about the impact of his or her behaviour on the alleged victim.

3. The Association of Chief Police Officers (ACPO) and the National Policing Improvement Agency (NPIA) have issued guidelines on the law relating to stalking and harassment, which include guidelines on the use of PINs.¹

4. Before we consider whether or not the police action was a contempt, it may be helpful to give the background to the case. It is clear that there had been “a long-running and intractable dispute” between Mr Loughton and his constituent, and between the constituent and other people within the constituency for some time. In August 2012 the constituent had written to Mr Loughton to complain that the local council had included him on a list of “customers of concern” and had described him as “unkempt”. In response, Mr Loughton had sent the constituent a letter robustly defending the Council’s actions and description, and had declined to act on the matter. The constituent made a complaint to Sussex Police on the grounds that the use of the word “unkempt” was a slur on his racial background. Sussex Police investigated, interviewed Mr Loughton under caution and eventually referred the matter to the Crown Prosecution Service (CPS). In February 2013 the CPS advised that there was no realistic prospect of conviction of Mr Loughton for offences under the Malicious Communications Act 1988 and the Communications Act 2003. While the letter was arguably offensive it was not grossly offensive for the purposes of the relevant legislation. In its decision, the CPS indicated to Sussex Police, that while the feelings of the constituent were clearly relevant in relation to the use of the word unkempt, they were not definitive for the purposes of prosecution.²

5. In March 2013 Mr Loughton complained to Sussex Police about comments on his constituent’s blog. On 4 March 2013 Mr Loughton had a meeting with Martin Richards, the Chief Constable of Sussex Police. in the course of which he asked the Chief Constable for advice on a letter he proposed to send to his constituent, “informing him that it would

1 Association of Chief Police Officers and National Policing Improvement Agency, [Practice Advice on Investigating Stalking and Harassment](#), 2009

2 [TLS 007](#) [Sussex Police]

no longer be feasible for me to act as his MP and he should desist from contacting my office and staff”.³ The Chief Constable declined to offer such advice.

6. On 13 March, Mr Loughton raised the matter on a half-hour adjournment debate in the House. His speech concentrated on the actions of Sussex Police in investigating his e-mail, but in the course of that speech he also “sacked” the constituent concerned.⁴ He took advice from the Clerk of the House as to how to convey his unwillingness to act further as a constituency MP to his constituent, and was advised to send the complete Hansard daily part, with no extraneous comment. Mr Loughton accordingly sent a copy of Hansard with a blank House of Commons compliments slip to the constituent.

7. In addition to the dispute between the constituent and Mr Loughton, there were disputes between the constituent and local councillors. In December 2012 the constituent complained to the police that he had received threatening letters. The constituent was also the subject of comment on social media and blogging sites. The constituent’s own blog offered comments on Mr Loughton and other individuals. In June 2013 there was an incident at Shoreham Farmers’ Market, after which the constituent complained of assault.

8. The situation was such concern to Sussex Police that they established a “Gold Group”, under the direction of the Assistant Chief Constable, Mr Robin Merrett, to consider how best to handle this case. In July that group decided to issue all those involved with PINs. The notice to Mr Loughton was sent in September 2013.

9. The chronology is set out in Box 1.

Box 1: Chronology

August 2012—original exchange of e-mails between Mr Loughton and his constituent.

17 August 2012—constituent complains to the police.

8 November 2012—file sent to CPS headquarters in London.

19 December 2012—constituent complains of receiving a threatening letter; complaints about further letters were made on 20, 21 and 22 December.

14 February 2013—police receive advice from the CPS that there was no realistic prospect of conviction of Mr Loughton for offences under the Malicious Communications Act 1988 and the Communications Act 2003.

1 March 2013—Mr Loughton complains to the police about the blog run by his constituent.

4 March 2013—Mr Loughton seeks to present a letter (for him to send to his constituent) to the Chief Constable with a view to seeking assurance that no police action would be

3 [TLS 003](#) [Tim Loughton MP] para 2

4 HC Deb (2012–13), 13 March 2013, Col 430

taken in the event of it being sent to his constituent.

13 March 2013—Mr Loughton’s first speech in the House, complaining about the police action and “sacking” his constituent.

The police take no action as this is covered by parliamentary privilege, but record it as a further racist incident complaint.

14 March—the constituent posts three entries on his blog about the debate.

14 March or a few days later—Mr Loughton sends a daily part of Hansard, accompanied by a compliments slip to his constituent through the post.

Around 18 March 2013—constituent receives a copy of Hansard with a compliments slip.

27 March 2013—constituent interviewed under caution about content of his blog. No further action taken because “the high evidential threshold demanded” was not met.

31 May 2013—meeting between Mr Loughton and police to explain why action had not been taken. During this meeting Mr Loughton admits sending a copy of Hansard to his constituent, and raised parliamentary privilege.

8 June 2013—constituent makes complaint of assault following an incident at the Shoreham Farmers Market.

14 June 2013 —constituent arrested, and released on bail with conditions not to contact Mr Loughton or local councillors. After investigation “the matter was not considered to meet the high evidential requirements of prosecution and the matter was filed”.

3 July 2013—Gold Group decides to issue PINs to all those involved in the dispute.

21 August 2013—Gold Group meets again.

4 September 2013—PIN sent to Mr Loughton’s parliamentary office by registered post.

9 October 2013— Mr Loughton raises the matter in the House and it is referred to the Committee of Privileges.

Sussex police’s legal advice

10. It is clear from the documentation provided by Mr Loughton that he raised the issue of parliamentary privilege with Sussex Police before 3 July 2013, and raised it in writing on that date, the day of the Gold Group meeting. Nonetheless, Sussex Police took the decision to issue PINs to all those concerned without taking legal advice on the issue of a PIN in respect of the sending of a copy of Hansard. The police took such advice—only after the matter of privilege had been referred to the committee—on 21 October 2013 and 23 December 2013. We consider it was unwise of Sussex Police to press ahead with the decision to issue a PIN in respect of the sending of Hansard without first investigating the legal position. The Clerk of the House told us that “we would have been very pleased, had

we been approached by anyone else in this matter, to have given advice. I hope that it is not flippant to say that our advice would have been free”.⁵

The legal background

11. Parliamentary privilege has been defined as

the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.⁶

12. As Erskine May says, it is a breach of privilege to disregard or attack any of these rights and immunities, punishable under the law of Parliament. This jurisdiction is not limited to attacks on specific rights and immunities:

Each House also claims the right to punish contempts, that is, actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers.⁷

13. Members of Parliament are not immune from the general criminal law. While correspondence directly preparatory to proceedings in Parliament would be protected by Parliamentary privilege, as a rule MPs’ general correspondence enjoys only the qualified privilege which applies to many types of official and business correspondence. As the Clerk Assistant noted:

the central issue facing the Committee is not that a PIN has been issued to a Member of Parliament: nor that a Member’s communication with a constituent has attracted a formal police warning: but that the action referred to in the PIN was the sending of a daily part of Hansard.⁸

14. Mr Loughton’s sending of the Hansard potentially engaged two provisions relating to the freedom of speech in Parliament. The first is the wide protection of the freedom of speech in Parliament, which is given statutory expression by Article IX of the Bill of Rights, but which long predates that Act. That protection gives those participating in proceedings of the House, whether as Members or as witnesses, absolute freedom of speech in such proceedings.

5 [Q 132](#)

6 Erskine May, *Parliamentary Practice*, 24th edition (London, 2011), p 203

7 *Ibid*

8 [TLS 002](#) [Clerk Assistant]

15. This absolute freedom of speech in Parliament protects proceedings, and matters directly related to proceedings. It is not unlimited—repetition of words spoken in proceedings, or published by order of the House, is not protected by parliamentary privilege. Nor does the privilege extend to *reports* of Parliamentary proceedings. In the 1830s the House of Commons and the Courts clashed over whether this freedom of speech meant that documents published by order of the House were similarly privileged, in the case of *Stockdale v Hansard* (and related cases). The courts rejected this proposition. While the House did not formally accept the courts' jurisdiction, it implicitly did so by passing the Parliamentary Papers Act 1840, and so giving a statutory basis for protecting those involved in publishing and disseminating papers published by either House of Parliament, rather than relying on privilege based on the law and custom of Parliament.

16. The Parliamentary Papers Act has four sections:

1. Proceedings, criminal or civil, against persons for publication of papers printed by order of Parliament, to be stayed upon delivery of a certificate and affidavit to the effect that such publication is by order of either House of Parliament.
2. Proceedings to be stayed when commenced in respect of a copy of an authenticated report, &c.
3. In proceedings for printing any extract or abstract of a paper, it may be shewn that such extract was bona fide made.
4. Act not to affect the privileges of Parliament.⁹

The protection of the 1840 Act is not limited to proceedings in Parliament or to those who participate in them. It extends to anyone who disseminates papers published by order of Parliament. The publication of papers by order of the House or of copies of such documents enjoy complete protection, while third party reports of Parliamentary proceedings or extracts or summaries of papers enjoy some privilege, provided such reports or extracts are made without malice.

17. There is a third aspect of the matter, as far as parliamentary privilege is concerned. In addition to the statutory protection of the Parliamentary Papers Act, and the important constitutional principle of parliamentary freedom of speech, as recognised in the Bill of Rights, the House of Commons retains its rights to condemn and if necessary take action against contempts. As Erskine May explains:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty,

9 [Parliamentary Papers Act 1840](#)

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.¹⁰

Committee process

18. In modern times the House has been reluctant to exercise its jurisdiction over matters such as “abusive contempts”, recognising that robust comment is part of a free society. We have no desire to change that, so the test we have applied in this case has been whether the actions of Sussex Police have impeded, or were likely to impede, the functions of the House.

19. We have also carefully considered the fairness of our process. We took both written and oral evidence from Mr Loughton himself, Sussex Police and the Clerk of the House, the Clerk Assistant and Speaker’s Counsel. Sussex Police have provided a great deal of background documentation. Since much of this relates to complaints made to the police, or to internal police meetings, we have decided to publish only a limited amount of that material. We have shared documents which we considered material with Mr Loughton and the police. As Standing Order No. 148A provides, the Attorney General attended our meeting on 4 February, and we found it most helpful to have his contribution when we discussed the issues raised by this case.

20. We note the recommendations of the Joint Committee on Parliamentary Privilege that if the Committee of Privileges intended to criticise anyone they should inform the person writing and invite them to respond.¹¹ In this case we considered that the nature of the criticisms contained in this report are such that this was an unnecessary step. We are concerned with clarifying whether or not Sussex Police acted properly, and considering any wider implications of this case. It is not our aim to single out individuals for particular criticism.

Sending the volume of Hansard

21. Mr Loughton’s evidence was that the sending of Hansard was directly related to his earlier meeting with the Chief Constable:

As the minute of the March 4th meeting between the Chief Constable and me shows I asked the Chief Constable to give me some sort of assurance that a letter I proposed to send to my constituent informing him that I would not act for him in the future would not then be the subject of a further investigation by the police. [...] The letter was innocuous and factual but was not sent as the Chief Constable refused to pass any comment on it, as the minutes of that meeting show. [...]

¹⁰ Erskine May, *Parliamentary Practice*, 24th edition (London, 2011), p 251

¹¹ Joint Committee on Parliamentary Privilege, Report of Session 2013–14, [Parliamentary Privilege](#), HL Paper 30, HC 100, see para 100 and Annex 3

Subsequently I sought advice from the Speaker who referred me to the Clerk of the House, who in turn advised me to send the copy of Hansard to my constituent with a simple compliments slip.¹²

The Clerk of the House explained his advice was intended to protect Mr Loughton from defamation proceedings: he had not considered harassment.

What would have been a contempt?

22. As Erskine May makes clear, the House has agreed to exercise its penal jurisdiction as sparingly as possible and only when 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 causing or likely to cause, substantial interference with the performance of their respective functions.¹³ This appears to us to be a reasonable threshold for deciding whether a contempt was committed.

23. The privilege of freedom of speech ensures that Members of each House can speak freely and that each House can obtain the information it needs. As the Joint Committee on Parliamentary Privilege noted:

whatever the jurisdiction, it is normal for a democratic state to protect parliamentary independence. Indeed, as the Irish Government argued at the European Court of Human Rights, “parliamentary immunity has developed throughout the world not as a constraint upon the rights of the citizen, but as a fundamental liberty”.¹⁴

Successive decisions of the Committee of Privileges have held that disciplining, punishing or threatening someone because of what they may say or have said in proceedings is a contempt.¹⁵

24. In the modern era, Members also consider communicating their Parliamentary activities to constituents as an important part of their work. The Clerk Assistant noted:

The Committee may also wish to consider the potential effect on the generality of Members, who might reasonably be deterred from sending even plainly privileged material to constituents for fear of being similarly served with a harassment PIN because one of their constituents found it alarming or distressing. That effect might be only marginally mitigated by recognition that such a PIN could in all likelihood never be followed by a successful prosecution.¹⁶

12 [TLS 010](#) [Tim Loughton MP]

13 Erskine May, *Parliamentary Practice*, 24th edition (London, 2011), p 251

14 Joint Committee on Parliamentary Privilege, Report of Session 2013–14, [Parliamentary Privilege](#), HL Paper 30/HC 100 para 2

15 See Joint Committee on Parliamentary Privilege, Report of Session 2012–13, [Parliamentary Privilege](#), HL Paper 30/HC 100, Annex 1

16 [TLS 002](#) [Clerk Assistant] para 18

The Clerk of the House told us:

I certainly did not contemplate the possibility that sending a copy of Hansard to a constituent might be taken to constitute harassment under the Protection from Harassment Act 1997. Had such a proposition been put to me I would have expressed astonishment that the sending of the official record of the House of Commons to anyone could have that result.

But with the knowledge that I now have of the reaction of Sussex Police to the Member's action, my advice might possibly have been more cautious to ensure the Member ran no legal risk at all.

And had that been so, there could be no clearer demonstration of the chilling effect of the actions taken by the police in this case. I do not think it has ever been thought, until now, that the mere act of sending a person a copy of a report ordered by the House of Commons to be printed could be such as to engage the criminal law.¹⁷

And in evidence Mr Loughton told us that the chilling effect of the police action had gone wider than him alone:

It is not just me. A number of colleagues have come up to me to say, "Gosh, I've got this dispute with a constituent. Am I now going to become the subject of police action? Can you give me some advice?" I have taken on a bit of a "Dear Deidre" role in this respect. It is difficult to know what one has to do now not to fall foul of police action.

As I said, I was the subject of a PIN on the back of an investigation of which I was not aware, let alone being given the opportunity to challenge the charges. Should I now, as I quite often have done in the past, send out a copy of Hansard to a constituent in connection with some query? I have to think twice about doing that. Quite often I would cut and paste sections of Hansard in response to a constituent¹⁸

25. It has long been considered that absolute privilege does not extend to communications with constituents. As our description of the Parliamentary Papers Act 1840 shows, using extracts from Hansard is protected, provided that such use is bona fide and without malice in each case. While every case must be dealt with on its own merits, as a general principle, the use of Hansard in the way described appears unexceptionable. We remind colleagues that absolute privilege does not attach to communications outside proceedings. Although we see no need to recommend any change to the protection given to Members' communications with their constituents and others, we take seriously the possibility that legal action as a consequence of the publication of parliamentary proceedings might come to have a chilling effect on what is said in proceedings themselves. If participation in Parliamentary proceedings comes to carry a threat of legal consequences, or of criminal

17 [T15 012](#) [Clerk of the House of Commons]

18 [Q 10](#)

investigation, it is likely that those participating will be less frank, and that Parliament will be the poorer for it.

The motivation for sending the PIN

26. We note the ACPO guidance that:

Individuals should not be issued with notices relating to behaviour which would not constitute a breach of the PHA , even if it were to be repeated and then form part of a course of conduct.¹⁹

We also note section 1.3 of the Protection from Harassment Act:

Subsection (1) does not apply to a course of conduct if the person who pursued it shows— .

(a)that it was pursued for the purpose of preventing or detecting crime,

(b)that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c)that in the particular circumstances the pursuit of the course of conduct was reasonable.²⁰

The guidance also indicates that PINs should not be used to deal with entrenched disputes. When we raised this with Sussex Police they responded:

the issuing of PINs was part of a range of tactics that we were deploying. For example, we talked about introducing mediators to help to defuse the situation. We talked about working with Adur district council to provide support to parties to the dispute and the families of those parties. We were actively engaging by providing permanent points of contact for those people, some of whom were intermediaries whom we were trying to introduce to try to defuse the situation as much as possible. The PIN was an attempt by us effectively to draw a line in the sand regarding the various allegations of harassment that had been received, to put down a marker and to give everyone fair notice that people were being genuinely upset by what others were doing.²¹

27. The motivation for sending the PINs may have been understandable. Nonetheless, as Sussex Police now concede, section 2 of the Parliamentary Papers Act 1840 provides absolute protection for those who send copies of papers published by order of either House of Parliament, whoever they might be. We are confident section 2 of the Parliamentary

19 Association of Chief Police Officers and National Policing Improvement Agency, [Practice Advice on Investigating Stalking and Harassment](#), 2009, p 71

20 [Protection from Harassment Act 1997](#), Section 1.3

21 [Q 17](#)

Papers Act 1840 means no legal action could have followed the sending of a complete copy of Hansard.

28. While the PIN contained an empty threat, if the motivation for issuing it had simply been to prevent the sending of any copy of Hansard, regardless of its content, it would not have been a contempt. Anyone, Member or not, could send such a daily part and rely on the protection of the Act in doing so. But if Sussex Police were motivated not by the publication of the paper alone, but by the content of the proceedings in Parliament which it transcribed, then a contempt would have been committed.

29. We now consider to what extent Sussex Police were motivated by the content of the document, rather than its appearance on the constituent's doorstep. In their evidence to us, Sussex Police said:

The receipt of the anonymous letter containing Hansard, set in the context of these previous letters, resulted in the constituent complaining that he felt threatened by the "collective", which in his mind included local Councillors and Mr Loughton. The constituent's perception of receiving Hansard was that it was sent with malice and was a mocking statement of power and authority. The content itself was not the important factor.²²

30. The police also stated in this supplementary memorandum that:

Mr Loughton was subject of a criminal investigation which started in August 2012 after he made comments about his constituent, both in the House and also in an email.²³

The original memorandum said:

In relation to the constituent's complaints about Mr Loughton's speech, Sussex Police did not take matters further due to the fact the speech was undoubtedly subject to Parliamentary Privilege. However, the further racist incident complaint was recorded in line with ACPO guidelines.²⁴

From this it appears that the statement in the House had been recorded in connection with a "racist incident complaint" before the copy of Hansard had been sent. Sussex Police clearly had the content of the statement in mind when they took that action.

31. We consider it is inappropriate to record a complaint relating entirely to words spoken in the House as a racist incident. If such actions became commonplace and Members' knew their words in the House could be recorded as potential crimes, there would undoubtedly be a chilling effect, and interference with the freedom of speech in the House. We are prepared to consider that the action in this case was not a contempt because no one outside Sussex Police service was aware of the action taken, and

22 [TLS 011](#) [Sussex Police] para 8

23 [TLS 011](#) [Sussex Police]

24 [TLS 007](#) [Sussex Police] para 34

therefore it could not be said to interfere with the functions of the House or its Members. In different circumstances, for example where legal proceedings have commenced as a result of a PIN, we could well find differently.

32. In oral evidence, we pressed Sussex Police as to what statement they took before issuing the PIN. In the document they identified as that statement the constituent complained specifically about the **content** of Hansard:

Contained within it was the transcript of a speech that was given by Tim Loughton MP. I found the contents of this letter to be offensive and racist. The transcript detailed from column 425, statements about myself that I believe are offensive and untrue. This speech made reference to my ethnic group in a derogatory way and I find that it is offensive. It is written on column 429 “What had the police done to determine that [redaction] actually is of Romany gypsy origin, and what specifically had caused offence to such a retiring violent?[sic]

I feel from this he expects me to prove what my origins in and ethnicity before crimes are investigated. I feel that if he has this opinion then what is his opinion of other persons of different origin or sexuality, who may wish to make a complaint against him. I feel that he’s being racist towards me as a result of this.

I find this letter a personal attack on myself from the who ever [sic] sent it to me. It appears it has been sent deliberately from them to mock and insult me. I should be able to choose what media I look or not look at. When it is posted through my door formally it seems that I am being personally targetted in an invasive way in my own home.²⁵

33. The content of the complaint leads us to conclude that, whatever their subsequent explanation, the police action in sending the PIN was clearly based on the content of Mr Loughton’s speech to the House. The fact that documentation supplied to the Committee consisted of the front page of the volume and adjournment debate alone reinforces this conclusion.

34. The PIN carries a threat of future legal action and it was motivated by the content of Mr Loughton’s speech to the House. A threat of legal action arising from the content of a speech made in the House and published by Order of the House is clearly a contempt. The ability of those who speak in Parliament to speak freely is a fundamental part of our democracy. The prospect that there may be legal proceedings in consequence of the making of or simple publication of, such a speech is likely to have a chilling effect on MPs and on others who take part in official proceedings.

35. We accept that Sussex Police did not intend to commit a contempt. Indeed they did not consider the matter at all until far too late. While they have refused to consider that

²⁵ Copy of Hansard material as sent to the constituent by post and associated statement of complaint dated [21 March 2013](#), not otherwise printed.

their actions in sending the PIN were in themselves inappropriate, they have apologised if they committed a contempt and asked for advice. They have clearly made a serious mistake, and have acknowledged as much. By the time this Report is published the two principal officers will have retired.

36. The police have now told us:

Having seen and heard all the evidence presented to the Committee, and having reflected carefully, Sussex Police accept that they could have phrased the PIN better in two respects. Firstly, it could have set out in detail all of the other behaviour being referred to.

Secondly, Sussex Police did not take account of the 1840 Act. They obviously knew that anything said in the House was privileged, which is why they took no action on the constituent's complaint about what Mr Loughton had said in the House. They did not know that the 1840 Act prevented any reliance being placed on publication of Hansard. Had they known that, the PIN would have contained a rider such as "Although sending a copy of Hansard may have caused alarm and distress, such an act cannot be the subject of any prosecution."²⁶

Under the circumstances we consider it would be appropriate for the PIN issued to Mr Loughton to be withdrawn. This is of course a matter for Sussex Police. We are not qualified to judge whether it would be appropriate for the police to issue a further PIN in relation to the other behaviour referred to, although we note it would presumably be based on the actions of unknown persons and on letters which they themselves have said they do not suggest were sent by Mr Loughton. Sussex Police should inform the Committee of the decision that they make and the reason for it. We will not consider this matter closed until they do so.

37. **As far as reference to Mr Loughton's sending of Hansard in any future PIN is concerned, we see no merit in a PIN which explicitly states that the act complained of could not be the subject of any prosecution, and the police actions in relation to the sending of Hansard are so clearly related to the content of the document that no rider could avoid the repetition of their previously inadvertent contempt.**

38. Sussex police have indicated their current understanding of the law:

Regrettably, Sussex Police cannot rule out the possibility that the dispute between Mr Loughton and his constituent will continue, and that some further use may be made of Hansard materials. They understand that sending an unedited copy of Hansard, without any covering note which constitutes effective repetition, would not be actionable in court even if the constituent is reasonably caused alarm and distress. However, they understand that if the Hansard were edited, for example by underlining, then the protection of the 1840 Act would be qualified. Further, anything

26 [TLS 011](#) [Sussex Police] paras 11–12

accompanying Hansard which may constitute effective repetition would take the publication outside the protection of the Act, and so could be relied on in court. If they have misunderstood the position they would be grateful for any clarification which the Committee feels able to give.²⁷

39. Those participating in proceedings may also find helpful the following broad principles, drawn from the analysis in this report:

- There is absolute freedom of speech for those participating in Parliamentary proceedings, whether as MP or witness;
- Legal proceedings arising from the publication of a paper etc by Order of the House will be stayed on delivery of a certificate that such publication is made by order, as must such proceedings arising from the publication of a copy of any such document; and
- There is legal protection for the publication of excerpts or summaries of proceedings, when they are made without malice.

40. There may be circumstances in which the courts consider that Parliamentary documents are being misused in ways which fall outside the protection of the 1840 Act. We are confident that such circumstances would be extremely rare. That said, we do not endorse the police's account of the legal position. We would not be confident that simple underlining of parts of a published a copy of Hansard would constitute editing such a document. As far as effective repetition is concerned, we note Lord Justice Laws's recent judgment in *Makudi v Triesman*, that "there may be instances where the protection of Article 9 indeed extends to extra-Parliamentary speech", although these may be infrequent.²⁸

41. Each case must be judged on its own merits, but while we have exercised restraint in this case, given the novelty of the circumstances, we would regard future attempts to restrict Members' freedom of speech in the House through PINs as a serious contempt. Moreover, we would deplore any attempts to circumvent either the freedom of speech in Parliament or the protection of the 1840 Parliamentary Papers Act by resorting to technicalities.

42. Mr Loughton's purpose in sending the Hansard was to give notice that he would not deal with his constituent again, and so we consider a repetition of the incident is unlikely. If a Member were to misuse his or her position, and misapply public resources, by repeatedly using Hansard as a means of intimidation, we expect that the Parliamentary Commissioner for Standards and the Committee on Standards would be prepared to investigate and take action.

43. We do not consider further action is necessary in this case, subject to an appropriate response from Sussex Police. Nonetheless, we deplore Sussex Police's inability to recognise

27 [TLS 011](#) [Sussex Police] para 15

28 [\[2014\] EWCA Civ 179, Case No: A2/2013/0436, 26 February 2014](#)

that the freedom of speech in Parliament, and the ability of Members to carry out their functions without unfounded legal threats, are themselves part of the law which the police uphold.

Formal Minutes

Tuesday 4 March 2014

Members present:

Kevin Barron, in the Chair

Sir Paul Beresford
Mr Robert Buckland

Sir Nick Harvey
Heather Wheeler

Draft Report (*Actions of Sussex Police*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 30 read and agreed to.

Paragraph 31 read, amended and agreed to.

Paragraphs 32 to 35 read and agreed to.

Paragraph 36 read, amended and agreed to.

Paragraph 37 read and agreed to.

Paragraph 38 read, amended, divided and agreed to (now paragraphs 38, 39 and 40).

Paragraph 41 to 42 read and agreed to.

Paragraph 43 read, amended and agreed to.

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

Ordered, That the Chair make the Report to the House.

Ordered, That part of the following written evidence be reported to the House for publication on the internet:

Tim Loughton MP (TLS 003)

David Natzler, Clerk Assistant, House of Commons (TLS 002)

Sussex Police (TLS 007)

Sussex Police (TLS 008)

Sussex Police (TLS 009)

Tim Loughton MP (TLS 010)

Sussex Police (TLS 011)

Sir Robert Rogers KCB, Clerk of the House of Commons (TLS 012)

[Adjourned to a day and time to be fixed by the Chair]

Witnesses

The following witnesses gave evidence. The transcript can be viewed on the Committee's inquiry page at www.parliament.uk/privileges.

Tuesday 28 January 2014

Question number

Mr Tim Loughton MP,

[Q 1–12](#)

Chief Constable Martin Richards QPM, and **Mr Robin Merrett,** retired
Assistant Chief Constable, Sussex Police

[Q 13–99](#)

Sir Robert Rogers KCB, Clerk of the House of Commons, **Mr David Natzler,**
Clerk Assistant and **Michael Carpenter CB,** Speaker's Counsel

[Q 100–133](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/privileges. TLS numbers are generated by the evidence processing system and so may not be complete.

- 1 Tim Loughton MP ([TLS 003](#))
- 2 David Natzler, Clerk Assistant ([TLS 002](#))
- 3 Sussex Police ([TLS 007](#))
- 4 Sussex Police ([TLS 008](#))
- 5 Sussex Police ([TLS 009](#))
- 6 Tim Loughton MP ([TLS 010](#))
- 7 Sussex Police ([TLS 011](#))
- 8 Sir Robert Rogers KCB, Clerk of the House of Commons ([TLS 012](#))