IN THE HIGH COURT OF JUSTICE **AC-2024-LON-004232 ("Claim 1")**

KING'S BENCH DIVISION **AC-2025-LON-00005 ("Claim 2")**

ADMINISTRATIVE COURT **AC-2025-LON-000133 ("Claim 3")**

B E T W E E N :

THE KING on the application of

ALR (by their litigation friend ASG) and others ("Claim 1")

ALX (by his litigation friend ALF) and others ("Claim 2")

EMMANUEL SCHOOL (DERBY) LTD (t/a EMMANUEL SCHOOL and others ("Claim 3")

Claimants

And

CHANCELLOR OF THE EXCHEQUER

Defendant

And

(1) COMMISSIONERS OF HIS MAJESTY'S REVENUE AND CUSTOMS

(2) SPEAKER OF THE HOUSE OF COMMONS

Interested Parties

And

SECRETARY OF STATE FOR EDUCATION

Intervener

REPLY BY SPEAKER OF THE HOUSE OF COMMONS

References are formatted as follows to the Core Bundle ***[CB/tab no/page]****, Supplementary Bundle* ***[SB/tab no/page],*** *Authorities Bundle* ***[AB/tab no/page]****, the Speaker's Supplementary Authorities Bundle provided on 1 April 2025* ***[SAB/tab no/page]*** *and the Speaker's Further Supplementary Authorities Bundle provided on 3 April 2025* ***[FSAB/tab no/page]***

Introduction

1. This is a reply on behalf of the Speaker to the written submissions of the Claim 1 and Claim 2 Claimants, and of the Defendants, all served on 7 April 2025. (The Claim 3 Claimants provided submissions on 4 April 2025 but these did not relate to matters of Parliamentary privilege).

2. In respect of the submissions by the Defendants, the Speaker agrees with and adopts those submissions.

3. It is noted that both sets of Claimants state in their submissions that they do not need to rely upon the impugned material:

   (i) In Claim 1, it is said that they do not need to rely upon either the extract from the Public Accounts Committee Report[1] or the report from the Women and Equalities Committee[2] and can make the same points by reference to other material.

   (ii) In Claim 2, the Claimants state in terms that they do not require the 2024 NAO Report to make good their factual submissions, and that the issue of whether its use is "prohibited by parliamentary privilege is therefore not material to the disposal of the claim"[3]. The Claimants in Claim 1 make submissions in respect of the NAO report but do not rely on it themselves[4].

4. In those circumstances, it is open to the Court to take the view that this issue is academic and does not require resolution in this case. As set out below (and in previous submissions), the Speaker's position is that in respect of the Committee Reports successive judgments have confirmed the privileged nature of Committee material. In respect of the NAO report, however, the Speaker maintains his previous submissions, but acknowledges the lack of case law on the matter and the fact that the Court did not hear any oral argument on the issue. However, as set out below, it is apparent that there have been a number of cases where neither the parties nor the Court were aware of the issue of privilege and NAO reports, and there would be benefit in a judicial determination of the question.

5. To the extent that the Court decides these issues, the Speaker makes clear that he accepts that the decision as to the scope of Parliamentary privilege and the ambit of Article IX of the Bill of Rights is a matter for the Court[5] to decide. However, the Courts have made clear that they will pay careful regard to any views expressed on behalf of Parliament by either House (*Chaytor* at [16]).

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[1] See paragraph 3 of their submissions.
[2] Paragraph 4 of the C1 submissions.
[3] Paragraphs 5-7 of the C2 submissions.
[4] C1 submissions, paragraph 13 ("*the…NAO report on which the Claim 2 Claimants rely*").
[5] See e.g. *R v Chaytor* [2011] 1 AC ("*Chaytor*") at [15-16].

Use of Committee Reports

6. In response to paragraphs 3-12 of the Claim 1 submissions the Speaker relies primarily on his previous submissions of 3 April 2025 at paragraphs 10-34. In addition, and in response to the specific points raised:

   (i) The Claimants' arguments as to the breadth of the *Wilson* exemption would have the effect of permitting the use of *any* Parliamentary material if it cast light on *any* aspect of the compatibility of the legislation with ECHR rights (including, as here, as to factual matters which do not relate to the legislation specifically). That interpretation would mean that Article IX of the Bill of Rights was no longer of any effect where the Court was engaged in considering the compatibility of legislation. Such an approach would not only be unconstitutional, but was plainly not the intention of their Lordships in *Wilson*; see 30-31 of the Speaker's previous submissions.

   (ii) In ascribing such a broad scope to *Wilson*, the Claimants fail to recognise the issue that was actually before the Judicial Committee in that case, namely a choice between the view that the policy and objects of a statute can only be determined by its language and that this alone represents Parliament's intention, and the view that reference to Parliamentary materials was acceptable in determining whether the policy considerations "*put forward by those participating in debates in either House were justifiable in Convention terms and proportionate to the remedy proposed*"[6]. It was the same issue that was before the Supreme Court in *SC*.

   (iii) The Speaker fully accepts that Lord Nicholls in *Wilson* was addressing not only the identification of the legislative aim, but also the proportionality of the measure: see paragraph 26(i) of the Speaker's previous submissions. However, as set out in those submissions, the examples which he provides are all matters that are connected to the Bill (White Papers, explanatory notes etc.). He did not suggest that any material produced by Parliament at any time could be relevant.

   (iv) The Claimants argue that although *SC* addressed the *Wilson* principles it is "*not relevant here*", ostensibly on the basis that *SC* was about the use of Parliamentary

[6] See §53 of *Wilson* **[SAB/2/44-5].**

debates, rather than committee reports. The Speaker disagrees. *SC* was addressing the same principles, and there is no reason to differentiate in this respect between the core business of the House in its committees and in its debates. *SC* provides the clearest and most comprehensive guidance on the use of Parliamentary material when doing so in order to assess the compatibility of legislation.

(v) A wide variety of views on matters of public importance are expressed formally or informally in each House. Parties will inevitably choose the material which is most supportive of their case. If the Claimants' contention was accepted, the courts would have to determine which of these views should carry most weight or, in the alternative, were most likely to have influenced the House's decision. It would for example have to decide between the merits of a Committee report and the Government response there to. In contrast, the *Wilson* and *SC* decisions provide for the court to determine whether these matters were before the House when it was considering the legislation.

(vi) As to the point raised in respect of the date of the Public Accounts Committee ("PAC") report[7] (being published on 25 January 2025), although it is correct that the Finance Bill was still under consideration at this time, the report had no connection to the Bill. It sheds no light on the policy aims or proportionality of the Bill, nor has it anything to say about the Bill, because its publication was wholly unrelated to it.

(vii) As to the point raised at paragraph 11 of the Claim 1 Claimants' submissions, the Claimants have overlooked that *Reilly* concerned compatibility with ECHR rights, specifically Article 6 – see [108-109]

National Audit Office (NAO) Reports

7. As stated above, the Speaker recognises that the position in respect of NAO reports is more complex, in particular due to the role of relevant statutory provisions. For that reason the Speaker set out the position in some detail in the previous submissions, and that is not

[7] Paragraph 10 of the Claim 1 submissions.

repeated here. The Speaker's position is that an NAO report is very much a Parliamentary proceeding. Those representing the Speaker can confirm that the Speaker's Office has liaised with the NAO, and that the NAO is in agreement with the Speaker's position.

8. As to the specific points raised. In respect of the Claimants in Claim 1[8]:

   (i) Paragraph 14(1): The lack of a statutory process by which the NAO provides its information to the Commons tends to support rather than undermine the Speaker's position. The legislation provides for the powers and legal status of the Comptroller and the NAO. It sets out a framework in which they are accountable not to the Government but to a statutory body composed solely of MPs either appointed *ex officio* or by the House itself and requires the C&AG to have regard to proposals from the Committee of Public Accounts (necessary because of the stipulation in s.17(1) of the Budget Responsibility and National Audit Act 2011[9]). Other than that, the Act does not purport to control the way in which they participate in proceedings. The House of Commons makes its own arrangements for the way in which reports and advice from the NAO and the C&AG are used in proceedings. The NAO's reports are an integral part of the House's arrangements for scrutinising Government spending.

   (ii) Paragraph 14(2): Although the NAO's report to the House is discretionary in terms of statutory requirements, it is standard practice for the NAO to report to the House (as set out in Erskine May – see the Speaker's previous submissions at paragraph 39). In terms of Parliamentary process, convention and precedent are very important parts of the constitutional arrangements. The convention is that the NAO always reports to the House. The House itself has the powers to enforce this convention through the NAO's relation with the Committee of Public Accounts, the Public Accounts Commission and the House as a whole. In addition, it is only by reporting to the House that the NAO has legal protection for its reports.

[8] Paragraphs 14-15 of their submissions
[9] that "*The Comptroller and Auditor General has complete discretion in the carrying out of the functions of that office, including in determining whether to carry out an examination under Part 2 of the National Audit Act 1983 and as to the manner in which any such examination is carried out.*"

(iii) Paragraph 14(3): The Speaker accepts that the situation is distinct from the issue of an unopposed return that was at issue in *Warsama*. In particular there is no motion for a return in this context. However, it is analogous:

a. In particular, it is essential that the House is informed (as in *Warsama*[10]); the unopposed return formed part of the essential business of Parliament, keeping Members informed of what is going on within Government departments so that they can hold those departments to account[11]. In *Warsama*, it was seen as important that *"The fact that it is the minister's department that organises the request by the House (or by the Queen to that minister) does not detract from the fact that this process forms part of the essential business of Parliament. It is the business of keeping Members informed of the important work being carried out within Government departments so that they can hold those departments to account."* The same is true of reports of the NAO, which are an essential part of the way in which the House itself, the Committee of Public Accounts and other committees perform their functions in relation to the Commons' constitutional role in controlling supply (i.e. the grant of money to the Government and the consequent check that the money so granted is used for the purposes for which it was authorised). This role is recognised in statute[12].

b. *Warsama* adopts[13] the 1999 Joint Committee's suggestion that the protection of privilege "*should be confined to those areas that need this immunity if Parliament is to be effective*", which the Appellants had suggested was a basis for excluding unopposed returns from its protection. The court held that reports published by way of unopposed return are "well within" those areas. That

[10] §61 **[FSAB/3/137]**
[11] §61: "*The substance of what happens in an Unopposed Return is that the House as a collective body calls for the provision of information from someone outside the House on a matter about which the Members resolve they wish to be informed. Here, that person is the minister….One of Parliament's primary functions is to ensure the public accountability of ministers and their departments, to investigate and expose wrongdoing or abuse of power on the part of the executive and to insist on remedial action. The provision of the Report to Parliament was an essential part of that process..."*
[12] See s25 of the Government Resources and Accounts Act 2000 which stipulates in relation to the audit of Government accounts that:
"25(2) If the Comptroller and Auditor General changes the extent or character of a particular kind of examination, he shall report to the House of Commons.
(3)An examination of accounts carried out by the Comptroller and Auditor General shall be carried out on behalf of the House of Commons."
[13] §63 **[FSAB/3/138]**.

reasoning applies to reports of the NAO regardless of the fact that they arrive at the House by a different route. At §63 the Court stated: (emphasis added)

> *"…we do not read the concerns expressed in the 1999 Report of the Joint Committee on Parliamentary Privilege as recommending a different answer in this case. The conclusions recognise (para 349) the useful purpose of the Unopposed Return procedure and accepted that some of the papers laid, such as the annual reports of the Comptroller and Auditor General should not be inhibited by the risk of actions for defamation. Its criticism was reserved for papers where it was hard to see any such risk. The touchstone suggested by the Joint Committee (but not enacted) was that absolute protection should be confined to those areas which need this immunity if Parliament is to be effective…".*

c. It may not necessarily be the case that all papers laid under Acts will attract privilege. However, in respect of the NAO specifically, it is because (as explained in detail in the previous submissions) its reports are so fundamental to an important aspect of the House's work that the answer is clear.

(iv) As to paragraph 15 of the Claim 1 submissions, the fact that other cases have referred to NAO reports and have been oblivious to the issues of Parliamentary privilege that arise, is irrelevant. Indeed, in this case, had the Speaker not happened to be an Interested Party (for unrelated reasons) the issue would not have been identified. Furthermore, in the cases cited by the Claim 1 Claimants at paragraph 15, it does not appear that the conclusions of the NAO report were in issue, and therefore no issue of "impeaching" or "questioning" would have arisen. As stated in the Speaker's previous submissions, the only case where the Speaker is aware that the issue was identified and considered is the Tribunal case of *DK & RK*, where the conclusion was that the report is protected. The Speaker would add that, as a Court of coordinate jurisdiction, that this Court should follow the decision of Mr Justice Lane and Mr C M G Ockelton in *DK & RK* as a matter of judicial comity unless "*convinced that that judgment is wrong*" (see *R v HM Coroner for Greater Manchester ex parte Tal* [1985] QB 67 at page 81)

9. The same arguments as in Claim 1 are made by the Claimants in Claim 2 (paragraphs 10-11) and the Speaker repeats the response above.

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8 April 2025