

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

**SUBMISSIONS OF THE SPEAKER OF THE HOUSE OF COMMONS
 ON THE REMAINING ISSUES OF PARLIAMENTARY PRIVILEGE**

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 with these submissions on 3 April 2025 [FSAB/tab no/page]

Introduction

1. This written submission is provided following the Court’s indication that such a note would be useful. The Speaker intends to address the Court orally on these matters, but the Note may assist as a record, or in the event that the available time for such submissions is limited.
2. There are five topics addressed:
 - (i) Disposal of the academic issue of justiciability of Budget Resolutions;
 - (ii) The Defendant’s application of 31 March 2025;
 - (iii) The use of Committee reports by the First Claimant;
 - (iv) The National Audit Office report;
 - (v) The Hansard extract at Tab 199.
3. The third of these issues is where there is currently a material dispute.

(i) Disposal of the justiciability issue

4. Following the grant of Royal Assent to the Finance Act 2025 on 20 March 2025, the parties have all agreed that the challenge to the Budget Resolution is academic, and the Claimants have all been granted permission to amend their claims to challenge only the relevant provisions of the Finance Act 2025.
5. The Speaker wishes to draw the Court’s attention to the agreement that was made by all parties and sent to the Court on 25 March 2025 [SB/228/2697]. The wording of that agreement had input from all parties, and provides that:
 1. *The Claimants had originally sought to challenge the House of Commons Budget Resolution, given statutory effect under the Provisional Collection of Taxes Act 1968 (“the Budget Resolution”).*
 2. *The Speaker of the House Commons was joined as an Interested Party and submitted that the Budget Resolution was non-justiciable during the time that the Finance Bill (“the Bill”) was proceeding through Parliament. The Claimants’ skeleton arguments maintained their position that the claim as originally filed against the Budget Resolution was justiciable.*
 3. *In light of the Bill having received Royal Assent on 20 March 2025 and being enacted as the Finance Act 2025, the Claimants in Claim 1 and Claim 2 have applied and in Claim 3 have indicated that they will shortly apply to amend their Claims to challenge the relevant provisions of the Finance Act 2025, and no longer seek to challenge the Budget Resolution, as such a claim has become academic.*

4. *In the circumstances, the parties are in agreement that it is not necessary for the Court to hear argument on or decide the issue of the justiciability of the Budget Resolution.*
6. The Speaker's only remaining concern is that the judgment does not, by omission, imply that the Speaker had no objection to the claim as originally formulated. For that purpose, the Speaker respectfully suggests that the Court considers incorporating the agreement into the Judgment, or by other means indicates that the Speaker's view was that the Budget Resolution was non-justiciable during the time that the Finance Bill was before Parliament, but that in the event there was no need to decide the issue. For balance, the Court may also want to include wording to indicate (as per the agreed wording) that the Claimants had maintained that it was justiciable.

(ii) Defendant's application of 31 March 2025

7. On 31 March 2025, the Defendant, First Interested Party and Intervener made an application for permission to rely on a statement from Natalie Reeder dated 30 March 2025. The Speaker objected to that application in submissions dated 1 April 2025.
8. Having heard the submissions from Sir James Eadie KC in Court on the morning of 1 April 2025 as to the limits within which that statement is used, it appears that the use of that material will go no further than "*ascertaining whether matters relating to compatibility were raised during the legislative process*", and nothing will be said as to the adequacy or cogency of Parliament's consideration, and that its use will therefore be within the strict parameters set out at §183 of the decision in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, AC 223 [AB/90/3982].
9. On that basis (and assuming that nothing is said to the contrary during oral submissions on 3 April 2025 after the preparation of this document) the Speaker withdraws his objection to the application for permission (notwithstanding the lateness of the application) and leaves it as a matter for the Court.

(iii) The use of Select Committee Reports

10. This relates to the attempted use of Parliamentary material, specifically two Committee reports, by the Claimants in the First Claim:

- (i) An extract from the Women and Equalities Committee report “Sexual harassment and sexual violence in schools inquiry” from 13 September 2016 [SB/43/327-330];
- (ii) An extract from the Committee of Public Accounts’ First Report of Session 2024-25 “Support for children and young people with special educational needs” from 15 January 2025 [SB/38/301-302].

11. The Women and Equalities Committee report is relied upon in the Second Witness Statement of Julie Robinson at paragraph 29 [CB/43/670]. The extract from the Committee of Public Accounts’ report was referred to in argument on the first day of the hearing (1 April 2025) by Lord Pannick KC for the Claimants in the First Claim.

Proceedings in Parliament

12. Article 9 of the Bill of Rights 1689 confers on “proceedings in Parliament” protection from being “impeached or questioned” in any “court or place out of Parliament”. This built on a pre-existing common law claim to exclusive cognisance over things said or done in Parliament¹.
13. It is assumed to be common ground that a report of a Commons Committee is a proceeding in Parliament. This is well-established in case-law, see e.g. *R (Chaytor)* [2010] UKSC 52, [2011] 1 AC 684 in which Lord Phillips said at §47:

“The jurisprudence to which I have referred is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament.” (underlining added).²

¹ See generally the Speaker’s written submissions of 11 March 2025 at paragraph 7 onwards [CB/7/166].

² To the extent necessary, this is also confirmed in *Prebble v Television New Zealand* [1995] 1 AC 321 [SAB/1/14]. There, the Privy Council explained that the (Australian) Parliamentary Privileges Act 1987 had been passed to reverse the effect of a New South Wales Court decision which had permitted statements of a select committee to be used. See s.16(2) of that Act.

Questioning of Parliamentary proceedings

14. The second question is whether the use of this material necessarily involves questioning a proceeding in Parliament. The Speaker's position is that the First Claimants' use of this material cannot be done without impermissibly "questioning" or "impeaching" Parliamentary proceedings.
15. The use to which the First Claimants seek to put the report is important, as is often the case in questions of Parliamentary privilege. In this case it is clear that the First Claimants are seeking to rely on the two reports as evidence of the facts found by the two committees and/or their conclusions (respectively, as to the state of SEN provision in England in one case, and as to the extent of sexual violence against girls in schools in the other).
16. That is not permissible, and the use of Parliamentary material to establish factual matters in this way was ruled out even in the extreme circumstances of a case such as *Kimathi v Foreign and Commonwealth Office* [2017] EWHC 3379 (QB), [2018] 4 WLR 48. That case is summarised in the *Heathrow Hub*³ decision at §168 which the court has at [SAB/4/185] as follows:

"...Kimathi concerned an attempt to use Parliamentary material to prove facts (the number of detainees held in camps in Kenya in the 1950s) which were neither confirmed nor denied by the other party to the case and in respect of which there was no other evidence. At [20] Stewart J said:

"... The claimants' application is an unusual one because it is sought by them to rely on what was said in Parliament to prove (a) that facts which occurred extraneous to Parliament but were mentioned in Parliament were true and (b) that the person who related those facts in Parliament believed them to be true... [H]ere the defendant does not admit those underlying facts, in which case the claimants cannot rely upon Hansard for the truth of what was said. If they were able to rely on it for that purpose, the Court would then be in a position of having to decide the accuracy of the content of the proceedings in Parliament, so as to determine if those facts had been proven. This is expressly forbidden."

17. The full report of *Kimathi* has now also been provided to the Court in [FSAB/2/79-114], and the above passage is at [FSAB/2/85].

³ [2020] 4 C.M.L.R. 17

18. The same reasoning has been applied in respect specifically of House of Commons Committee reports. See *Office of Government Commerce v Information Commissioner* [2010] QB 98 [SAB/3/114], §§58-59, in which Stanley Burnton J stated:

“58. ...If a party to proceedings before a court (or the Information Tribunal) seeks to rely on an opinion expressed by a select committee, the other party, if it wishes to contend for a different result, must either contend that the opinion of the committee was wrong (and give reasons why), thereby at the very least risking a breach of parliamentary privilege, if not committing an actual breach, or, because of the risk of that breach, accept that opinion notwithstanding that it would not otherwise wish to do so. This would be unfair to that party. It indicates that a party to litigation should not seek to rely on the opinion of a parliamentary committee, since it puts the other party at an unfair disadvantage and, if the other party does dispute the correctness of the opinion of the committee, would put the tribunal in the position of committing a breach of parliamentary privilege if it were to accept that the parliamentary committee's opinion was wrong. ...

59. If it is wrong for a party to rely on the opinion of a parliamentary committee, it must be equally wrong for the tribunal itself to seek to rely on it, since it places the party seeking to persuade the tribunal to adopt an opinion different from that of the select committee in the same unfair position as where it is raised by the opposing party. Furthermore, if the tribunal either rejects or approves the opinion of the select committee it thereby passes judgment on it. To put the same point differently, in raising the possibility of its reliance on the opinion of the select committee, the tribunal potentially made it the subject of submission as to its correctness and of inference, which would be a breach of parliamentary privilege. This is, in my judgment, the kind of submission or inference, to use the words of section 16(3) of the Parliamentary Privileges Act 1987, which is prohibited.”

19. That proposition has been adopted in subsequent cases, including by the Court of Appeal in *R (Reilly and another) v Secretary of State for Work and Pensions (No 2)* [2016] EWCA Civ 413 (where the material was used in respect of issues as to whether there was an unjustified breach of Article 6⁴). At §109 Lord Justice Underhill (giving the judgment of the Court) held that the judge below had erred⁵ in permitting use of the Committee report:

*“...[Parliamentary] debates are relied upon extensively when they should not be and, furthermore, the conclusions of select committees are prayed in aid with the court being asked to ‘approve’ them. For the reasons summarised by Stanley Burnton J in his judgment in *Office of Government Commerce v Information Comr (Attorney General intervening)* [2010] QB 98, paras 46—48, that should not happen.” [FSAB/1/55].*

⁴ The Secretary of State argued in that case that even if there was some interference with the Claimant’s Article 6 rights it was justified on compelling grounds of the public interest. See paragraph 36.

⁵ See §80 of *Reilly* for a summary of the Parliamentary material relied upon by the judge at first instance [FSAB/1/46].

20. See also *R (Gardner and Harris) v Secretary of State for Health and Social Care* [2021] EWHC 2946 (Admin) (at §23-24) where a Divisional Court made a robust refusal of reliance on opinions in a report from the Committee of Public Accounts.

21. In this case, the Claimants are seeking to rely on factual findings contained in the two committee reports, on matters which the Speaker does not understand to be agreed by other parties (such as the Defendants). In those circumstances, unless the Defendant is prepared to simply admit the facts in question, they would be placed in a position where they were prohibited from making any criticisms of, or qualifications to, those findings, and as explained in *Kimathi, Office of Government Commerce* and *Reilly*, this is not permitted.

The scope of the Wilson v First County Trust Ltd (No.2) [2004] 1 AC 816 (“Wilson”) exception

22. The next question is whether *Wilson* affects this position. *Wilson* creates an exception whereby Parliamentary material can be used: the second exception listed in *Heathrow Hub*, namely use of Parliamentary material when determining whether legislation is compatible with the European Convention on Human Rights. The Claimant relies on what was said by Lord Nicholls at §§61-64, by Lord Hope at §118, and Lord Hobhouse at §§141-142.

23. It is right to note that in certain passages, taken in isolation and out of context, *Wilson* appears to state very general principles in favour of broad admissibility. The high point would be perhaps Lord Nicholls at §64 or Lord Hobhouse at §142. However, to look at those passages in that way would be to fundamentally misunderstand the scope of the decision. It is not authority for a proposition that simply because a case involves determining compatibility of legislation with Convention rights, that all Parliamentary material which would otherwise be inadmissible becomes available.

24. *Wilson* does not support the admissibility of findings of fact in a Parliamentary committee report which is not part of consideration of the impugned measure, or where adducing the report would risk questioning Parliamentary proceedings.

25. First, the *Wilson* exception only relates to Parliamentary material related to the specific measure in question (in *Wilson*, that measure was s.127(3) of the Consumer Credit Act 1973). The Court of Appeal below had referred to “*parliamentary debates on the [Consumer Credit] Bill not as an aid to interpretation, but on the reason which led*

*Parliament to enact section 127(3)*⁶. The issue in the Supreme Court was whether, when considering compatibility with the European Convention, the “*policy and objects of a statute must be determined by interpreting its language [alone]*” or whether it was permissible to have reference to debates “*for the purpose of 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*”⁷. That issue was described as being “*a point of constitutional importance*”⁸.

26. That limitation on the scope of *Wilson* is clear in each of their Lordships’ speeches:

- (i) Lord Nicholls begins the relevant passage (at §61) by explaining that when considering whether the policy has a legitimate policy objective, “*the court will look primarily at the legislation, but not exclusively so... What is relevant is the underlying social purpose sought to be achieved by the statutory provision. Frequently that purpose will be self-evident, but this will not always be so.*” Similarly, at paragraph §§62-63, when considering whether the second stage - of whether the means is appropriate and not disproportionate - “*the facts will often speak for themselves. But sometimes the court may need additional background information tending to show, for instance, the likely practical impact of the statutory measure and why the course adopted by the legislature is or is not appropriate*”, and “*the court may need enlightenment on the nature and extent of the social problem (the “mischief”) at which the legislation is aimed*”. Lord Nicholls goes on at §64 to explain the type of “*additional background material*” that the Court might use in this exercise, such as a White Paper, “*information provided in the course of debate on a Bill*”, or explanatory notes. [SAB/2/47-8].
- (ii) Lord Hope similarly, made very clear that he was referring to information in Parliament relating to the Bill in question: see §116 and §117. The material he was considering in the relevant passage (§§115-118) was material relating to Parliament’s “*reasons, if any, ...for the legislation it enacts*” [SAB/2/61-2].

⁶ See §52 [SAB/2/44].

⁷ Paragraph 53 [SAB/2/44].

⁸ Paragraph 54 [SAB/2/45].

- (iii) Lord Hobhouse (at §141) also makes clear that what follows (at §142) relates to the need for “*legal examination of the content and legal effect of the provision*”, and also “*the mischief, social evil, danger etc which it is designed to deal with*” [SAB/2/70].

27. None of their Lordships in any way had in contemplation that they envisaged admissibility of Parliamentary material wholly unconnected to the Consumer Credit Bill. The purpose of the exercise of looking to the Parliamentary material (and the entire debate in *Wilson*) was as to establishing relevant features of the legislation in question.
28. It is submitted that this is entirely clear on the face of *Wilson*. However, the point is made even clearer by the Supreme Court’s subsequent review of the position in *R (SC and others) v Secretary of State for Work and Pensions and others* [2021] UKSC 26, [2022] AC 223 §§163-184 (“SC”) where the Supreme Court provided a comprehensive review of the authorities as to the use of Parliamentary material when determining compatibility under the Human Rights Act [AB/90/3976-3982]. See paragraphs §§163-185, and in particular Lord Reed at §§182-184 [AB/90/3981-2].
29. This has been addressed by the Speaker in the submissions in respect of the Defendant’s application, and the detail is not repeated. *SC* is abundantly clear in its explanation of the *Wilson* exception that the Court had in mind Parliamentary material potentially relevant to proportionality which relates to evidence of consideration of the relevant issue concerning the measure in question. Even then, it is subject to the very important qualifications set out at §183 on which the Speaker has already provided submissions.
30. Secondly, neither *Wilson* nor *SC* suggests in any way that the exception is intended to open the door to questioning or impeaching Parliamentary proceedings. Even where the *Wilson* exception applies, the material can still only be deployed provided that it does not question or criticise Parliamentary proceedings.
31. In *Wilson*, see:

- (i) Lord Nicholls (at §60):

“What is important is to recognise there are occasions when courts may properly have regard to ministerial and other statements made in Parliament without in any way “questioning” what has been said in Parliament, without

giving rise to difficulties inherent in treating such statements as indicative of the will of Parliament, and without in any other way encroaching upon parliamentary privilege by interfering in matters properly for consideration and regulation by Parliament alone.” [SAB/2/46] at G

(ii) And at §67:

“The court is called upon to evaluate the proportionality of the legislation, not the adequacy of the minister's exploration of the policy options or of his explanations to Parliament. The latter would contravene article 9 of the Bill of Rights.” [SAB/2/48-9] at H

(iii) Per Lord Hope §117:

“A cautious approach is needed, and particular care must be taken not to stray beyond the search for material that will simply inform the court into the forbidden territory of questioning the proceedings in Parliament.” [SAB/2/62] at C

(iv) Per Lord Hobhouse §143:

“...it is easy to understand why it was that [the Speaker] thought it necessary to intervene. The Court of Appeal, having decided that they must consider section 4 and that article 1 was engaged, then entered upon a process of scrutinising what had been said in Parliament as reported in Hansard to see whether it disclosed any justification they were prepared to accept for the relevant provisions of the 1974 Act at the time they were enacted. This was an unacceptable approach and likely to give rise to abuse” [SAB/2/71] above D

32. See also *SC*, especially at §173, §178 and §183 [AB/90/3978-3980, 3982].

33. The *Wilson* and *SC* exception that permits Parliamentary material to be used for certain purposes does not allow a breach of Article 9 to take place, and is not a licence for the impermissible calling into question of Parliamentary proceedings.

Conclusion as to the admissibility of the Committee reports

34. In this case, the two committee reports are inadmissible:

(i) First, for the reasons set out above, the intended use is impermissible. Seeking to adduce a committee report to establish factual matters is impermissible, unless those

matters are facts agreed by the parties⁹, as it involves potentially questioning or calling into question the report, as explained in *OGC, Kimathi and Reilly*. The *Wilson* exception (even where it applies) still does not permit the questioning of Parliamentary proceedings.

- (ii) Secondly, the intended use of the reports is wholly outside the scope of the *Wilson* exception in any event. Neither of the committee reports relate to the Finance Bill or the imposition of VAT on school fees. The report of the Women and Equalities Committee was from 2016. The report from the Committee of Public Accounts was from 25 January 2025, long after the introduction of the Bill in November, and does not address the issue of school fees and VAT at all.

(iv) Use of the National Audit Office report

35. On 2 April 2025 the Claimants in the Second Claim made material reference to a National Audit Office (“NAO”) Report (“Support for children and young people with special educational needs” dated 24 October 2024 [SB/54/417-176]. An extract of the same NAO Report dated 24 October 2024 appears at [SB/20/177-188]) and a further report dated 11 September 2019 [SB/57/493-552] also appears in the bundle. The Speaker’s view is that if the findings of these reports are contested they are not admissible because of Article 9 of the Bill of Rights.

36. NAO Value for Money reports are considered by the Speaker to be proceedings in Parliament for the purposes of Article 9 given their close association with the constitutional role of the House of Commons in authorising and scrutinising Government expenditure, their intimate link to the work of the Committee of Public Accounts, and the control exercised by the House of Commons over the Comptroller and Auditor General (“C&AG”) and the NAO.

37. The NAO in its current form is a body created by statute but intimately connected with and ultimately accountable to the House of Commons.¹⁰ The NAO provides its Value for Money

⁹ See *Kimathi* [FSAB/2/85] at §20.

¹⁰ The NAO in its current form is the product of the National Audit Act 1983 and the Budget Responsibility and National Audit Act 2011 but the inception of an audit body to serve the House of Commons and the dedicated Committee of Public Accounts can be traced to the Exchequer and Audit Departments Act 1866, a result of Gladstonian reforms.

reports to the House of Commons, and under the authority of the House publishes them,¹¹ thereby making them subject to the Parliamentary Papers Act 1840 (which offers protection to their publisher).

38. As noted in Erskine May at paragraph 6.44:

“The [Comptroller and Auditor General] heads the National Audit Office and assists the House of Commons by controlling the issue of money granted by Parliament from the Exchequer on demand of the Treasury and by auditing the accounts of government departments and a wide range of public sector bodies on behalf of the House. The Comptroller's reports on the Resource Accounts (see para 34.5) and examinations of economy, effectiveness and efficiency under the National Audit Act 1983, Pt II, form the basis of the work of the Committee of Public Accounts (see para 38.65).

Under s 12(2) of the 2011 Act, the Comptroller and Auditor General continues to be an Officer of the House of Commons, but the Comptroller, and the National Audit Office, are not under the control of the House of Commons Commission.¹² The Public Accounts Commission has various duties with respect to the National Audit Office (see para 6.45).”

39. Furthermore, as noted at paragraph 38.65 of Erskine May, the C&AG has a close relationship with the Committee of Public Accounts¹³, which:

“...bases its work on reports by the Comptroller and Auditor General, presented to Parliament under the National Audit Act 1983, s 9, together with those on the appropriation and other accounts laid before Parliament. The committee has examined the accounts of the BBC and Bank of England to reflect the broader remit of the National Audit Office. The committee also considers memoranda submitted to it by the Comptroller and Auditor General (either as own-initiative exercises or in response to requests made by the committee), and Treasury Minutes containing the Government's observations on previous committee reports. The Comptroller and Auditor General is required to take into account any proposals made by the committee in determining the National Audit Office's programme of economy, efficiency and effectiveness examinations.”

¹¹ The 2024 Report notes: “Ordered by the House of Commons to be printed on 22 October 2024. This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act” [SB/54/419]. Section 9 of the National Audit Act 1983, states: “9. Reports to House of Commons. (1) The Comptroller and Auditor General may report to the House of Commons the results of any examination carried out by him under section 6 or 7 above.” Section 6(1) provides “(1) The Comptroller and Auditor General may carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body to which this section applies has used its resources in discharging its functions.”

¹² Instead, the Public Accounts Commission, constituted solely of Members of the House of Commons, provides oversight.

¹³ Distinct from the Public Accounts Commission.

40. A value for money report is the first step toward a report from the Committee of Public Accounts and provides the basis for that report. It may also be the basis for work by other Parliamentary committees.
41. The C&AG has statutory authority to report to the House of Commons on whether government departments and the bodies they fund have used their resources efficiently and effectively. The C&AG is appointed by His Majesty on an Address from the House of Commons. He can only be dismissed if the House agrees to an Address for his dismissal.
42. The NAO's Board is also accountable to Parliament, through the Public Accounts Commission which is a body solely of MPs, which not only considers the expenditure of the NAO but appoints Board members other than the Chair of the NAO Board, who is appointed by His Majesty on an Address by the House of Commons.
43. The status of NAO reports as being subject to Parliamentary privilege has only been addressed in one authority of which the Speaker is aware, by the Upper Tribunal in the case of *DK & RK (Parliamentary privilege; evidence)* [2021] UKUT 00061 (IAC) ("*DK and RK*") [FSAB/4/153-160]. At issue in *DK & RK* was the content of a report from an All Party Parliamentary Group ("APPG") which expressed seemingly critical views about the findings of an NAO report. At §§17-18 the Tribunal (Mr Justice Lane and Mr CMG Ockelton) stated as follows:

"17. The APPG report also makes reference to the National Audit Office report on TOEIC. The reports of the National Audit Office are documents that attract the protection of the Parliamentary Papers Act 1840. This protects the publisher of any document ordered to be printed by either House of Parliament from any legal action that may result from it.

18. In Warsama & Gannon v Foreign & Commonwealth Office [2020] EWCA Civ 142, the Court of Appeal was concerned with the application of privilege to an unopposed return; that is to say, a paper ordered by the House of Commons to be printed following a motion on the floor of the House. In a letter of 15 December 2020 to the respondent in regard to the present appeals, Counsel to the Speaker of the House of Commons considers the factual position in Warsama to be analogous with that of documents covered by the Parliamentary Papers Act 1840. In both cases, the House of Commons has an interest in the reporting in question being full and frank. Thus, as is the case with evidence provided to a Select Committee, the protection of privilege extends to a person who is not a Member of Parliament, in order to protect that person's ability to report fully and honestly to the House. That, we find, is the position with the National Audit Office report." [FSAB/4/157-8].

44. The Speaker agrees with that conclusion that an NAO report falls within the ambit of Parliamentary proceedings, and with the analysis in *Warsama*¹⁴ on which it is based.
45. However, as explained above in respect of the Committee reports, that does not prevent reliance upon the report unless it is to be questioned or impeached. Unlike other categories of Parliamentary material (such as committee reports) NAO reports contain factual material and the NAO seeks to agree the text of these reports with the accounting officer(s) concerned so there is a clear undisputed evidence base for PAC scrutiny, although recommendations will be made by the NAO alone. Where the facts contained in such reports are accepted by all relevant parties, then no issue of Parliamentary privilege arises that prevents their use. Reliance on the analysis and recommendations in such reports, or upon the figures therein where there is dispute about their accuracy, is likely to draw the courts into forbidden territory.
46. At time of preparing these submissions, the Claimants (in the second claim) have relied on the NAO report, quite extensively, but without querying any aspect of it. The issue becomes acute in the event that another party (such as the Defendant) indicates that it is not able to say that it agrees with the findings of the NAO, and therefore it does not come within the first *Heathrow Hub* exception (“*evidence of proceedings in Parliament to prove what was said or done in Parliament as a matter of historical fact where this is uncontentious*”).

(v) Tab 199

47. Finally, and for completeness, the Speaker notes that Tab 199 in the Supplementary Bundle contains an extract from Hansard [SB/199/2197] entitled “Dedicated Schools Grant Allocations”. This is an exhibit to the First Witness Statement of Alison Ismail, and is referred to at §96 [CB/39/635]. However, this is only an announcement of the grants made, for which a link for the public, published by the Government was provided. In the view of the Speaker, this comes within the first *Heathrow Hub* exception, set out above. No objection is taken to that document.

¹⁴ Provided for the Court at [FSAB/3/115-152].

DAVID MANKNELL KC

RAJKIRAN ARHESTEY

1 CROWN OFFICE ROW

3 April 2025