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FROM THE LORD WALLACE OF SALTAIRE
LORD IN WAITING
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Dear John,

7th July 2014

Re: Questions raised at the Second Reading of the Parliamentary Privilege (Defamation) Bill – 27 June 2014

I am writing to respond to questions that you raised at the Second Reading of Lord Lester's Defamation Bill on Friday 27 June 2014, regarding:
1) the effect upon defamation cases of the reforms contained in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012;
2) the status of evidence given by Mr Mark Burby to the recent Joint Committee on Privacy and Injunctions; and
3) the operation of Parliamentary Privilege in matters which are *sub judice*.
I will address your questions in this order.

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012

As you may know, the operation of no-win no-fee conditional fee agreement (CFAs) **was reformed by Part 2 of the** Legal Aid, Sentencing and Punishment of Offenders **(LASPO) Act 2012.** Under our changes, we are abolishing the recovery of the additional legal costs - CFA success fees and after the event (ATE) insurance premiums - from the losing side in all categories of civil litigation. **The CFA changes generally came into force on 1 April 2013.**

However, we have recognised the special position of defamation and privacy cases and the concern that individuals who are not wealthy or powerful sometimes need to bring such cases. That is why on 12 December 2012, following the publication of the Leveson report, the Government announced that it would delay implementation of the no-win no-fee CFA reforms to defamation and privacy claims until a costs protection regime has been introduced. In general, this will mean that less wealthy litigants are protected from the costs they might have to pay to the other side, should the claim fail.

The Government consulted on a costs protection regime in defamation

Rt Hon the Lord Prescott
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and privacy claims last September. We are considering the way forward, but for the time being defamation and privacy cases are not affected by the no-win no-fee reforms in the LASPO Act.

Evidence given to the Joint Committee on Privacy and Injunctions.

Although I am aware of the evidence that Mr Burby gave to the Joint Committee on Privacy and Injunctions, I am not aware of the circumstances around the publication of that evidence. As you will know, your concerns regarding the issue were brought to the attention of the Chairman of the Joint Committee on Parliamentary Privilege, Lord Brabazon of Tara, when you raised them during the passage of the Defamation Bill in February 2013. In the event, the Joint Committee did not refer specifically to the matter in its report published on 3 July 2013. The Committee indicated in general terms that it did not consider that there had been significant developments in respect of breaches of court injunctions in parliamentary proceedings since the recommendations of the Joint Committee on Privacy and Injunctions were published in March 2012 and did not therefore see a need for action in relation to this issue.

Matters *sub judice* in Parliament

You are right that there is a *sub judice* rule, which provides that matters awaiting adjudication in a court of law should not be debated in Parliament, except in certain limited circumstances. In the House of Commons, the occupant of the Chair (such as the Speaker of the House or a Committee chair) may direct any Member who breaches the *sub judice* rule to refrain from doing so. The House of Lords has a similar *sub judice* rule, although the Lord Speaker has no role in applying it. However, as both the House of Commons Select Committee on Procedure and the Joint Committee on Privacy and Injunctions have pointed out, the onus must also be on Members, both individually and collectively, to maintain high standards of conduct and respect the jurisdiction of the Courts, as the courts respect the jurisdiction of Parliament.

In relation to the statement of the Prime Minister, which you referred to, Parliamentary privilege does not extend to a statement made by No.10 to the press. It extends, under Article IX of the Bill of Rights, only to "the freedom of speech and debates or proceedings in Parliament". This involves some formal action taken by the House in its collective capacity (see Erskine May, 24th edition pp235-236 as referred to at paragraph 52 of the Government's Green Paper on Parliamentary Privilege, published April 2012). Ministers nonetheless are careful to respect *sub judice* as an ordinary legal principle in order to respect the integrity of the judicial process. As the Government said in its Green Paper at paragraph 52: "A speech in the chamber, a written or oral parliamentary question, a motion or a committee report will be a proceeding. A speech at a private event, a request to either House under the Freedom of Information Act 2000, or a TV interview will not be." Although there has in the past been some question as to what is meant by "in Parliament" and therefore as to the boundaries of parliamentary privilege, the Government considers it is sufficiently clear that legislation is not required. The Joint Committee on Parliamentary Privilege agreed with this conclusion.

I hope this letter satisfactorily answers your concerns. Thank you for your helpful contribution to this debate. I have copied this letter to all Peers who spoke in the debate and I will place a copy of this letter in the Libraries of the House.

Yours ever,

LORD WALLACE OF SALTAIRE