



1 December 2010

PRESS SUMMARY

R v Chaytor and others (Appellants) [2010] UKSC 52

On appeal from the Court of Appeal (Criminal Division) [2010] EWCA Crim 1910

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lady Hale, Lord Brown, Lord Mance, Lord Collins, Lord Kerr, Lord Clarke

BACKGROUND TO THE APPEALS

These appeals concern whether the criminal courts are prevented from trying certain former Members of Parliament on charges relating to expenses claims on the basis that the proceedings would infringe parliamentary privilege.

The three Appellants, Mr Morley, Mr Chaytor and Mr Devine have been committed for trial in the Crown Court on charges of false accounting, contrary to section 17(1)(b) of the Theft Act 1968. The charges relate to claims for parliamentary expenses and are alleged to have been committed when each Appellant was a serving member of the House of Commons. The claims concerned mortgage payments, IT services, rent for accommodation, cleaning and maintenance services, and the supply of stationery. A fourth defendant, Lord Hanningfield, who is a member of the House of Lords, faces similar charges.

The system for payment of Members of Parliament's allowances and expenses, as it existed at the relevant time, was created by Resolutions of the House of Commons and overseen by the Members Estimate Committee. The Fees Office received and considered claim forms and made payments in relation to claims. The claim forms which are the subject matter of all the charges were submitted to the Fees Office and contained a declaration, signed by the Member, confirming that the costs were incurred exclusively for the purpose of performing duties as a Member of Parliament.

Each Appellant is facing a separate trial but all have raised a common point of law, namely that criminal proceedings cannot be brought because they would infringe parliamentary privilege. The claim to privilege has two bases. The first is Article 9 of the Bill of Rights 1689, which provides: *That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament*. The second is described alternatively as the "exclusive cognisance" or "exclusive jurisdiction" of Parliament and refers to the right of each House to manage its own affairs without interference from the other or from outside Parliament. It is a privilege which is wider than, and embraces, Article 9.

A single preparatory hearing was held to consider the point of law. The judge ruled against the Appellants and Lord Hanningfield, and the Court of Appeal upheld that decision. The Appellants appealed to the Supreme Court. Lord Hanningfield did not appeal but was granted permission to intervene on a limited basis. On 10 November 2010 the Supreme Court ordered that each of the three appeals be dismissed, with reasons to follow. The Court now delivers those reasons.

JUDGMENT

The Supreme Court unanimously dismisses the appeals. Lord Phillips (President) and Lord Rodger give the lead judgments. The Court holds that neither Article 9 nor the exclusive jurisdiction of the House of Commons poses any bar to the jurisdiction of the Crown Court to try the Appellants.

REASONS FOR THE JUDGMENT

The issue under Article 9 was whether making claims for parliamentary expenses fell within the phrase “*proceedings in Parliament*”. The Court held that conduct of a Member is not privileged merely because it occurs within the House of Commons. The principal matter to which Article 9 is directed is freedom of speech and debate in the Houses of Parliament and parliamentary committees. 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. On this basis, submission of expenses claims does not qualify for the protection of privilege. Scrutiny of claims by the courts will not inhibit freedom of speech or debate. The only thing that it will inhibit is the making of dishonest claims: [48].

Parliament has expressed the same conclusion and although the extent of parliamentary privilege is ultimately a matter for the courts, it is one on which the courts will pay careful regard to the views of Parliament: [16]; [59]. There are also good policy reasons for giving Article 9 a narrow ambit, namely that its protection is absolute and, where it applies, it denies redress to those injured by civil wrongdoing and prevents Members being prosecuted for conduct which is criminal, despite the fact that Parliament has only limited penal powers of its own: [61].

On the exclusive jurisdiction issue, Parliament has to a large extent relinquished any claim to have exclusive jurisdiction over the administrative business of the two Houses. Nor does Parliament assert an exclusive jurisdiction to deal with criminal conduct within the walls of Parliament, even where it relates to or interferes with proceedings in committee or the Houses. The courts and Parliament have different, overlapping, jurisdictions. Parliament can hear proceedings for contempt of Parliament and a court can try the offender for the crime.

The area of activity to which the present prosecutions relate is administrative: it concerns the implementation of the expenses scheme, not the decisions of parliamentary committees in respect of the scheme itself. The expenses scheme merely provides the setting for the alleged offences and there is nothing in the allegations against the Appellants which relates to the core activities of Parliament, namely the legislative and deliberative processes, however widely construed. The House of Commons has asserted a disciplinary jurisdiction over expenses claims and has set up a review of such claims under Sir Thomas Legg. It has not, however, asserted exclusive jurisdiction. On the contrary, it has co-operated with the police investigation and excluded from the claims referred to Sir Thomas Legg any that are under investigation by the police: [89]-[92]; [122]-[123].

For these reasons, the Court held that the prosecutions neither infringed Article 9 nor impinged upon the exclusive jurisdiction of Parliament.

References in square brackets are to paragraph numbers in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html