HOUSE OF COMMONS

Justice Committee

Oral evidence: The Bill of Rights Bill, HC 562

Tuesday 5 July 2022

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Watch the meeting

Members present: Sir Robert Neill (Chair); Rob Butler; James Daly; Maria Eagle; Laura Farris; Paul Maynard; Dr Kieran Mullan; Karl Turner.

Questions 1 - 51

Witnesses

I: Professor Mark Elliott, Professor of Public Law and Chair of the Faculty of Law, University of Cambridge; Professor Gavin Phillipson, Professor of Law, University of Bristol; and Professor Guglielmo Verdirame QC, Barrister, Twenty Essex Chambers, and Professor of International Law, King's College London.

Examination of witnesses

Witnesses: Professor Elliott, Professor Phillipson and Professor Verdirame.

Q1 **Chair:** Thank you for coming to give evidence to us today. I will ask each of you to introduce yourselves for the record and then we will move on. This hearing arises because the Government have now published the much-trailed Bill of Rights, and we are interested in having some help from you as to our understanding of how some of the proposed measures might work in practice and how they compare with what was consulted on and the previous work done in this field.

Professor Phillipson: My name is Gavin Phillipson. I am professor of law at Bristol University with a specialism in human rights and public law.

Professor Elliott: I am Mark Elliott, professor of public law at the University of Cambridge.

Professor Verdirame: I am Guglielmo Verdirame, professor of international law at King's College London and a barrister in private practice.

Q2 **Chair:** Looking at what has been presented to Parliament, we know that the Government's manifesto commitment said they would "update the Human Rights Act", to quote their phrase. Essentially, what the Bill of Rights does is repeal and replace in large measure, although it maintains

some elements of the framework—I hope that is a fair observation—and we remain party to the convention; indeed, the Government incorporate the whole of the text of the convention in a schedule to the Bill.

What are the bits that will not be affected? They say they are keeping bits. What is the practication in doing it this way, where you remain within the convention and, therefore, under a legal duty to comply with the convention, and in fact be compatible with convention rights, but apparently you are removing other parts of the framework? What is the practical impact—for example, looking at the operation of the courts or the way in which public agencies might behave? Who wants to start?

Professor Phillipson: I am happy to start by outlining briefly the key parts of the Human Rights Act that are just copied over and therefore are effectively retained. One of the most important is the duty that was in section 6 of the Human Rights Act, and is now in clauses 12 and 34, on all public authorities to act compatibly with the convention rights, which include the courts themselves, and that being subject to incompatible primary legislation to preserve the sovereignty of Parliament. That is one of the central aspects of the Human Rights Act that is retained.

Courts still have the powers to issue declarations of incompatibility, which was section 4 and is now clause 10, and the power to fast-track changes to legislation that have been identified, interestingly, by the domestic courts, the Strasbourg court and by Ministers. The Henry VIII clause is kept. We still have the right to bring proceedings for breach of convention rights, and courts still have the power to award damages for breach of convention rights, although there are fresh restrictions on awarding damages. Some minor provisions are kept—for example, restrictions on the courts awarding injunctions that can affect freedom of expression and a clause relating to freedom of religion.

Q3 **Chair:** Professor Elliott, I know that you have come up with some thoughts on this.

Professor Elliott: I endorse what has just been said. To go to the second part of your question about the implications of doing it in this way while remaining a party to the European convention, one of the implications goes to a point that was central to the review Sir Peter Gross chaired, the independent Human Rights Act review. One of the guiding principles which that review adopted, or one of the key premises it adopted as a starting point, was the notion of bringing rights home. That was one of the ways the purpose of the Human Rights Act was described when it was first promoted.

The independent review noted that this consideration, one of the original aims of the Human Rights Act, tells against significant gaps emerging between rights protection before UK courts and the Strasbourg court, and such gaps would run counter to that philosophy. The point the review is making is that one of the guiding principles behind the Human Rights Act was to secure a high degree of alignment between domestic

jurisprudence and the domestic human rights regime and Strasbourg jurisprudence and the European convention regime.

It seems to me that, although on the surface the Bill of Rights still gives effect in domestic law to the same set of rights as the Human Rights Act, it gives effect to those rights in a very different and, in a number of respects, lesser way. I think that will serve to open up precisely the kind of gap that the independent Human Rights Act review assumes should be avoided if at all possible.

Q4 **Chair:** Sir Peter Gross recommended certain changes to the Act, so it is not as if he takes the view that adherence to the framework and the convention is unchangeable. How would you characterise the principal practical differences between what the Government have done, as opposed to what Sir Peter's recommendations might have meant in terms of that divergence, for example?

Professor Elliott: There were many differences, but there were two major differences between the recommendations of the review and the text that we now have in the Bill of Rights. First of all, although the review proposed some changes in relation to the wording of what is currently section 2 of the Human Rights Act, which addresses the UK courts' treatment of Strasbourg jurisprudence, it maintained the obligation on domestic courts to take into account that jurisprudence, whereas clause 3 of the Bill significantly loosens the relationship between what domestic courts do and the case law of the European Court, explicitly authorising and sometimes requiring domestic courts to depart from Strasbourg case law. That is the first of the two main distinctions.

The second distinction is that the independent review said that section 3 of the Human Rights Act, which requires domestic courts to interpret UK law compatibly with convention rights where possible, should stay. It proposed a cosmetic change to section 3, but in its conceptual operation and how it works it preserved section 3 in its entirety, whereas, conversely, the Bill of Rights entirely removes that obligation from the Bill of Rights, so a UK court will no longer be under a statutory obligation to interpret domestic law compatibly. In those two things, we will see the gap beginning to open up.

Professor Phillipson: It is worth noting that the Government's consultation paper did not suggest omitting section 3 completely. It suggested weakening and gave two different alternative tacks, so we were all rather surprised when the Bill came out to find that section 3 was just straightforwardly repealed.

Q5 **Chair:** The treatment of section 3—we will come back to it—is not in Gross and it is not in the consultation document either.

Professor Phillipson: No.

Q6 **Chair:** Professor Verdirame, that seems rather strange, doesn't it, if you are making evidence-based policy? What is your take?

Professor Verdirame: Yes. If I may take a step back to your original question, Chair, what continues? We should not lose sight of the most important thing that continues, which is that the catalogue of rights and their formulation is virtually the same. The most important aspect of any Bill of Rights is to agree on the catalogue of those rights and to agree on definitions. In 1997-98, the decision was taken, essentially, to copy and paste the treaty. I have been critical in the past of that decision. I think it could have been done differently precisely to avoid some of the problems with public confidence that we have seen since then. That said, we are where we are, and the decision to retain the catalogue of rights, schedule 1 being virtually the same, is very good and very important at this point.

It also indicates that there is a degree of continuity in the British model for a Bill of Rights. The catalogue of rights is what schedule 1 says, and so is co-extensive largely with the convention on certain protocols. Then there are provisions on interpretation where, as my colleagues have rightly pointed out, the real differences are. Interpretation is a very radically different position.

On incompatibility, there is also largely continuity. We should not lose sight of that fundamental continuity because it is very important. We are now 25 years from the Human Rights Act. The three main UK-wide parties have all been in power, and there is still quite a bit of common ground on the issue, and that is important.

In where that leaves us in the relationship with Strasbourg, we should again recall that other European countries are in a very similar position. In fact, they are in a more difficult position in managing their obligations under Strasbourg because litigation and fundamental Bills of Rights in other European countries are carried out by reference to distinctive constitutional texts, and then also the convention. Most other European countries will have their own Bill of Rights that is formulated in the way they have chosen at different points in their history. Even countries that adopted Bills of Rights relatively recently, like Albania, have chosen to do it in that way. We have not, and this is not the time to engage in redrafting.

The risk of a divergence with Strasbourg is one which fundamental rights jurisprudence across Europe has to manage, and manages, in a number of different ways. There is the risk of conflict. It is true that one of the consequences of this Bill, whether intended or not, will probably be more incompatibility decisions and the risk of more adverse judgments in Strasbourg. That seems to me to be clear. It is not an unusual position to be in, in terms of the relationship with the European Court of Human Rights.

Q7 **Chair:** It is striking, whether one agrees with the policy or not, that the UK's record of success as a state party in the Strasbourg court is pretty high and very much above the average. As you rightly concede, it is only too likely to shift if we get more divergence.

Professor Phillipson: The Joint Committee on Human Rights notes that the UK has the lowest number of successful claims of all the 47 Council of Europe states, which is striking.

Q8 **Karl Turner:** My understanding of section 3 of the Human Rights Act from my time as an undergraduate and my time in practice was that it basically requires the Court to read down legislation to give effect to convention rights. It seems quite a fundamental thing to have in the Act, as far as I see it. How will its repeal in its entirety change things, and how will we give effect to convention rights if that pretty fundamental part, in my view, is missing?

Professor Elliott: There are two ways in which courts might still end up interpreting domestic law consistently with convention rights, but more by happenstance than by design: first, because there will still be a general principle that courts interpret domestic legislation compatible with treaty obligations, but only where the legislation is somehow ambiguous, which is an approach that will kick in less frequently than the section 3 obligation kicks in; and, secondly, courts will continue to attempt to interpret Acts of Parliament consistent with common law principles and common law constitutional rights, and, to the extent that they overlap with or align or replicate convention rights, the consequence may be an interpretation that ends up aligning with convention obligations. It seems to me that that will be far less common because that wide-ranging obligation always to interpret compatibly whenever possible is entirely excised from the new legislation.

Professor Phillipson: The Human Rights Act has been quite influential in the Commonwealth. Several Australian states have adopted similar measures, and, in fact, New Zealand had previously adopted a similar instrument. They all contain interpretive clauses. They are not quite as strong as section 3 of the Human Rights Act. The expectation was that we would go to one of the slightly weaker variants that we see in Australian states and New Zealand. That adds to the surprise. If you are going to the effort of having a Bill that specifically gives effect to the convention rights, to have nothing about how you should deal with legislation that on the face of it is inconsistent is surprising.

Q9 **Chair:** That is interesting, Professor Verdirame, because there are common law jurisdictions as well with the same attachment to precedent rather than normally reading down on living instrument doctrine and that type of approach. Can you think of why it might not have been better to go down that route?

Professor Verdirame: I made submissions to both the review by Sir Peter Gross and the Government consultation paper, and I come down in favour of one of the weaker versions of section 3 that Professor Phillipson has referred to. On balance, it seems to me that could have worked pretty well, considering also that our courts had begun to make quite settled use of the section 3 power.

There is another problem that the Gross review identified, which is quite important in section 3, and that is the fact that we do not have a clear inventory of all the section 3 decisions. That will pose a particular challenge in the transitional regime that is envisaged under the Bill, because under clause 40 the Secretary of State has the power for two years to make regulations to restore or preserve a pre-section 3 interpretation, and that is a bit difficult to put into effect in an orderly way in circumstances where, as I said, we do not have a complete inventory of those decisions.

There are also some questions of clarity and certainty about the law that I think that regime could give rise to. I am a bit concerned about that, given where we are. Overall, in terms of clarity of outcomes, it is also the case that section 3 added a level of uncertainty because you did not quite know how the read-down would operate the painful gymnastics, which is how Dominic Grieve described it. There was an element of uncertainty that came with section 3. In some ways, Parliament will now be in a position to legislate and have a clearer sense of how its legislation will be interpreted, but that again is subject to the problem with the transitional regime and to the risk of more incompatibility.

Chair: That is helpful.

Q10 **Maria Eagle:** I want to ask a little bit about the relationship between domestic courts and the European Court and how the Bill will affect that. To what extent will the Bill of Rights Bill change the role of the Supreme Court in relation to the interpretation and enforcement of human rights in the UK?

Professor Phillipson: I would say perhaps not as it appears to envisage. Clause 3(1) says that the Supreme Court is the court that has the ultimate judicial authority. That is the case already. Once the Supreme Court has adopted an interpretation of a convention right that may be in reliance on a Strasbourg reading, all the other courts are bound to follow that, even if there is other Strasbourg case law that comes along afterwards that is inconsistent with it. The difference it will make will be in terms of the fact that there will no longer be an obligation on the Supreme Court and all the other courts to have regard to the convention rights.

There is a useful quote from a recent Supreme Court decision in 2019 that I would like to read to you, if it is okay. It is quite short. It gives a very good summary of the current court's approach to the Strasbourg case law: "Where there is a clear and consistent line of relevant case law of the European Court, the domestic courts should follow it unless there are exceptional circumstances which justify a different approach. That does not mean, however, that the domestic courts can or should substantially develop the European Court's case law…Parliament's purpose in enacting the Human Rights Act was to ensure that there is correspondence between the rights enforced domestically and those

available before the European Court, not to provide for rights which are more generous than those available before the European Court."

That is the press summary of the Supreme Court's judgment called AB. It is quite a nice summary of its overall approach. People who work in this area and who write about it would agree it is a fair summary of the Court's approach.

Professor Elliott: Going back to the point about how section 3 of the Human Rights Act arguably created uncertainty, it is likely that clause 3(3)(a) of the Bill of Rights Bill will also create uncertainty because it seems to require domestic courts to engage in a bizarre guessing game about how the Strasbourg court might decide matters it has not yet decided, and only allows domestic courts to adopt a more expansive interpretation of a right if the court has no reasonable doubt that the European Court would adopt that kind of interpretation. It is important to recognise that while some forms of uncertainty might be reduced through this new regime there will be significant new areas of uncertainty as well.

Q11 **Maria Eagle:** On that point, how is a domestic court going to decide whether it has no reasonable doubt that an interpretation that expands protection would be one that the European Court would adopt? It is not obvious to me how it would go about doing that.

Professor Elliott: The short answer is that I have no idea.

Maria Eagle: I have no idea either. I am pleased that it's not just me who has no idea.

Professor Elliott: I suppose they would try to work out what the trajectory of the Strasbourg jurisprudence was and to see whether they think that what is being contended for in domestic proceedings would fit into the envelope that the European Court is staking out in its judgments, but, clearly, that will be a difficult task.

Professor Verdirame: "Reasonable doubt" is a curious expression to find in this context. The way in which I think clause 3(3)(a) would be interpreted is probably something along these lines. The first question is to determine the reference point for the expansion. Is it domestic law or is it Strasbourg? Let's assume there is no Strasbourg precedent supporting the expansive interpretation. In that case, it seems to me that there must always be at least a reasonable doubt that Strasbourg will go ahead and expand if there is no precedent in Strasbourg already supporting that expansion.

In the situation where you have at least one precedent supporting the expansion, or even settled case law that is expansive, one could argue that even then, surely, there is at least a reasonable doubt that Strasbourg will change its mind on the expansion and revert to the original position, as reasonable doubt is quite a high threshold. However, given that the clause requires the domestic judge to imagine what it

would be like if the case ended in Strasbourg, it seems to me that a necessary step would have to be the fact that the UK needs to have at least an arguable case before Strasbourg. If there is no arguable case against the expansion, no one can go and plead the case for the UK in Strasbourg.

The real threshold, as part of the language of reasonable doubt, it seems to me, would in practice end up having to be that if there is an arguable case against the expansive precedence the domestic courts will not have to sign off on the expansion, but if there is no arguable case they would have to accept the expansion. That is how I would have to read it. Reasonable doubt is a bit strange in this context. If you apply it in the way in which it is normally understood—99% to 100% certainty—there is always reasonable doubt in this context and this kind of adjudication.

Q12 **Chair:** It is odd. For those of us who are criminal practitioners, as I was, you think of it purely as a term of art in legal terms and the directions you give to a jury on the burden and the standard of proof. In fact, even then you can get to a scenario where you might say that the case goes past half-time because there is an arguable case, but it is not enough. Judges now tend to use a different direction, don't they—you are satisfied so you are sure—because reasonable doubt created problems for juries? Perhaps it will not for the Supreme Court. That implies an evidence-gathering process almost, at which you assess whether or not there is reasonable doubt. Maybe that is the analysis that Professor Elliott was talking about.

Professor Verdirame: The reasonable doubt is to whether the European Court of Human Rights would adopt that interpretation if the case were before it. For the case to be before it, the case has to be arguable. If the case is not arguable, it will not be before it. If there is no arguable case against the expansion, that should be the end of the story in spite of the "reasonable doubt" language suggesting something much higher, I would have thought.

Q13 **Maria Eagle:** Does anybody else have a different view of that?

Professor Elliott: It is a very unclear provision partly because it introduces this very odd standard into a context you would not expect it to be in. None of us can be certain what the courts will do with this until it reaches the Supreme Court. It is one of many examples of new uncertainties that the Bill introduces.

Professor Phillipson: The phrase "expands the protection" will also be subject to dispute, argument and litigation because one of the many ways in which human rights develop is that they apply to new factual situations, particularly new technologies. There has been lots of case law on bulk collection of metadata of your communications; internet sites visited, not the content, and who you have been emailing and who you have been texting. That has given rise to a lot of case law. That is a new technological problem. If article 8 covers that and the question of how

weightily it engages it, is that an expansion, or is it simply applying it to a new circumstance?

Q14 **Maria Eagle:** Moving on, what would be the practical, legal effect of clause 24 of the Bill, which would limit the domestic legal effect of any interim measure of the European Court of Human Rights?

Professor Elliott: It seems to me a classic illustration of the fact that you cannot domestically legislate your way out of your international treaty obligations. Clause 24 can say whatever it wants to, but it will not change the position in international law.

The position, as I understand it, in international law is quite clear. Although there is no explicit support for this in the text of the convention, the European Court has been very clear that when interim measures are given by the European Court, for a state party to ignore those interim measures is a breach of article 34 of the convention because it inhibits the effective exercise of the right of individuals to make applications at the Strasbourg court. At least two judgments of the Grand Chamber of the European Court have confirmed that interpretation. The bottom line is that, whatever clause 24 says, it simply does not, and cannot, change the position in terms of the UK's treaty obligations.

Q15 **Maria Eagle:** What is its purpose then?

Professor Verdirame: Paragraph 3 of clause 24 is the one that raises the problems that Professor Elliott has identified. Paragraph 1, in a sense, says something pretty obvious; in determining the rights and obligations, whether there is an interim measure or not should not be determinative of that question. The obligation to comply with an interim measure is an obligation on the UK that derives from cases like Mamatkulov in 2005.

It is true, as Professor Elliott says, that the power to adopt an interim measure is not provided for under the convention. For a long time, the Court took the view that it did not have the power to adopt binding interim measures. Things changed when the International Court of Justice decided in a case called LaGrand that its interim measures were binding, and then one or two years later the European Court, and a number of other courts to be fair, followed suit and decided that in principle they could adopt interim measures that are binding on states. There have been cases where states, including Belgium in a case called Trabelsi *v.* Italy and a case called Toumi *v.* Italy, failed to comply with the interim measure, and the court found that that failure to comply, even in circumstances where the application was subsequently brought to the court, was still a breach of article 34, which is the right of individual petition.

There is quite a lot of subsequent practice by states on the question of interim measures. States have indicated to the Court that they would like to have reasons for interim measures, which is the practice of the International Court of Justice and the International Tribunal for the Law

of the Sea where they give you a proper order with reasons. The Court does not do that; it issues press releases with one or two paragraphs, and it is not satisfactory.

In the domestic law, it seems to be one of those provisions that is designed to tell courts, "Don't take notice of it. It is for the Executive to deal with," and you go ahead and make your determinations. I am not sure how useful it would be because I suspect courts would not necessarily have taken notice of the interim measures to begin with in determining the scope of the rights and obligations.

Professor Phillipson: The odd thing is that you might think this was a direct response to the Rwanda situation, when, in fact, it would not make any difference because it says very clearly that it applies for the purposes of determining rights and obligations under domestic law. Ministers would still feel an obligation, or may well still feel one, in as far as they feel the obligation, to comply with international law, and feel in the same situation where a court issued measures with which, as a matter of their international law obligations, they should still comply, and this does not make any change to that at all.

Chair: That is helpful.

Q16 **Dr Mullan:** Picking up on your remarks, Professor Elliott, it gives the impression that there is an absolute certainty that, of course, we should follow interim measures, but, as your fellow panellist has just laid out, if you had asked the courts themselves 20 years ago they would have disagreed with you. Don't you think it is reasonable to suggest that it is open to interpretation, and, certainly, it could be argued that it was not the intention of the original convention when it was written?

Professor Elliott: Yes, it absolutely could be argued. All we can go on at the present time is the clear case law of the European Court of Human Rights which is now very clear that when interim measures are issued there is a binding treaty obligation implicit in article 34 that states parties are required to abide by that. There is always room for debate about whether the European Court has adopted a defensible interpretation of the convention. I do not dispute that at all.

Where I have some difficulty is with the general tenor of this Bill, which seems to assume, incorrectly, that it is somehow open as a matter of domestic law to manipulate, or to treat as malleable, obligations that are binding under a treaty. If the UK Government or the UK Parliament feel that the ECHR regime is not a suitable human rights regime for the UK to be a part of, that would be a policy decision that was entirely open to them to take, but the phrase "You can't have your cake and eat it" comes to mind.

Q17 **Dr Mullan:** Do you think it is a satisfactory situation that you can have an issue of particular elements of the interpretation that the court has taken over the years, which is the criticism—the court uses case law to

progress its agenda and its interpretation of the law—and you as an important and key member state have only one option, either leave or just accept that? Do you not think that then leads to the idea of trying to find some way of rebalancing it? Isn't that a legitimate and reasonable thing to want to do instead of having to leave?

Professor Elliott: The only way that you can rebalance treaty obligations is to renegotiate those treaty obligations.

Q18 **Dr Mullan:** Do you think that is likely to happen in the near future?

Professor Elliott: As a public lawyer, that is outside my experience and expertise to comment on.

Q19 **Dr Mullan:** Don't you think, as I said, that it is reasonable to try to rebalance what we have all agreed is a balancing act between interpretation and different states taking different approaches to those balancing acts? We have heard, for example, in relation to the article 3 discussion that there are other ways in which other states seek to create more balance without having to leave, and it is not catastrophised in the way it has been in this country.

Professor Elliott: What I think would be reasonable would be for the UK Government to be clear about their policy objective. If their policy objective is that they are dissatisfied with the treaty obligations that presently bind them, the rational response to that would be to set out on a course of action that would adjust those treaty obligations if that was possible, and, if it was not possible, they would find itself in the binary position that you have described.

The difficulty I have with the Bill is that it appears to seek to obfuscate that very simple fact of legal life, and it then seeks in a number of really rather subtle and, you might say, underhand ways to try to have it both ways by saying, "Yes, we are still a member of the convention. Yes, we are still bound by these obligations. We are giving the impression of continuity by still having the same convention rights set out in a schedule to the Bill." Actually, when you look beneath the hood and see what is going on within the Bill, you see that they are being given effect to in a very different way that will open up precisely the kind of gap between domestic practice and the European system itself that the Gross review said should be avoided.

I am not disagreeing with you that it is entirely within the gift of the UK Parliament to decide what it thinks the right approach is, but it is important to be clear what the objective is and then what the appropriate way of achieving that objective is. If the objective here is that we do not like the convention system, this is not the right response to that concern.

Q20 **Dr Mullan:** But that gives the impression that all EU states—

Professor Elliott: It has nothing to do with the EU.

Q21 **Dr Mullan:** —that all member countries to the convention are all totally

aligned in how they allow the Strasbourg law to play out in their own system. My understanding is that there are subtle differences between the different member states.

Professor Elliott: It is a matter for each state to decide how it wishes to fulfil its obligations under the convention as long as it fulfils those obligations. Article 13, for example, requires effective remedies to be available, and there are many different ways across the Council of Europe states in which that is—

Q22 **Dr Mullan:** There is not just one way.

Professor Elliott: That is absolutely correct.

Dr Mullan: Okay, thank you.

Q23 **Chair:** What about the position of the margin of appreciation in that regard? It is often much talked about.

Professor Verdirame: Yes, it is quite important in this context, as is subsidiarity, by the way. Subsidiarity was added to the preamble of the convention a few years ago, and a number of people have remarked that that principle still has properly to find its way to the practice of the court. I very much agree with the sentiment that we have to avoid a binary choice, in or out. That is not how the world works.

The German constitutional political system has been comfortable with the position where their constitutional court says, "I am the final arbiter in the event of a conflict between our constitution and EU law," and the ECJ says, "No, I am the final arbiter." They have said that to each other for 30 years and life goes on. It is part of modern life in a world where different legal orders coexist that we have to learn to manage those situations.

One concern that I have is that there has to be a strategy of positive, constructive engagement with Strasbourg, which I am firmly of the view is a great institution. It is an institution that has a record of self-correction. The UK, through submissions in cases like Hasan and Turkey, managed to achieve some of those results. It is possible to achieve legal change through the right engagement with the court, and it is also possible to do it through treaty change. That is how we got subsidiarity into the preamble and how sufficient disadvantage was added as an admissibility criterion to article 35, which is why you can now have the permission stage.

Change can be achieved. Particularly on the question of immigration, these concerns are common across the Council of Europe—Spain, Italy and Greece all have similar issues—and there needs to be some leadership from states to achieve that legal change with a new protocol or something, and it has to be part of the engagement with the court that I think has been lacking for some years more generally in the UK.

Q24 **James Daly:** We are the Justice Select Committee, so we should be discussing legal intricacies and everything else. I am going to ask a more political and, hopefully, more simplistic question. Essentially, the political heart of the discussion that we are having here is contained within section 1(2)(c): "that courts must give the greatest possible weight to the principle that, in a Parliamentary democracy, decisions about the balance between different policy aims, different Convention rights and Convention rights of different persons are properly made by Parliament."

To get down to, say, immigration policy and the policy in respect of Rwanda, I would be very interested in your views as to how the balance within the court, if it is a balance—it is an open question—regarding the interpretation of statute, the interpretation by the courts of a very definitive policy such as the Rwanda policy by this Government, and how the clause that I have just read out, gives somewhat direct support to the Government's contention that the will of Parliament should be expressed in some way through the court system. Could you give us a view on that?

Professor Elliott: Clause 1(2)(c) links forward to clause 7 where this is set out in more detail. It seems to me that this is concerned with situations where courts have to decide under the convention whether legislation is proportionate in terms of the limitations it imposes on a convention right in the pursuit of some conflicting policy objective.

There are various stages that courts work through when they are assessing proportionality. The final stage of that test is what we call the fair balance test where the court asks whether a fair balance is being struck by the legislation between, on the one hand, the convention right that is impacted and, on the other hand, the public interest that is being pursued, which is in tension with the convention rights. At the moment, under the Human Rights Act, courts will, and do, defer on democratic grounds in certain circumstances where the court recognises that the policy choice at stake is one that is more appropriate for Parliament to take a view on than for a court to take a view on. In that sense, I do not think that clause 7 is doing anything brand-new because that approach is already there in the domestic case law, but I think it makes two significant changes.

First, it requires this approach to be adopted across the board. Whenever a court is now dealing with this kind of question, it will have to exhibit what we currently call deference to Parliament. Secondly, it does not just require deference, which is the attaching of more weight, or more weight than usual, to Parliament's view; it requires the greatest possible weight to be attached to the principle that these decisions are ones for Parliament. If you think through the logic of that, if the court is attaching the greatest possible weight to that consideration, it then becomes quite difficult to see how any other consideration could ever outweigh it.

Q25 **James Daly:** Forgive me, Professor Elliott, you can use various words like "greatest" or whatever else like that, but what you have just said is essentially what we have at the moment with different words.

Professor Elliott: It is a more extreme version of what we have.

Professor Phillipson: It is also a blanket version. That is the key point. At the moment, the courts decide in particular cases that they are issues of party political controversy, and that there was a manifesto pledge to implement a certain policy, and they gave a lot of weight to that. Lord Reed did that in a case involving cuts to child tax credit, where he pointed out that it had very strong democratic credentials and Parliament had weighed up the issues carefully, and it was not appropriate for the courts to interfere in that particular case.

If you look at, for example, "The court must…regard Parliament as having decided…that the Act strikes an appropriate balance" between either conflicting convention rights or convention rights in other social matters, that may not always be the case. It may be an old statute in which it had not occurred to Parliament to consider these matters because human rights did not have the prominence, or it may be one in which the Executive have made an unexpected and more draconian use of the powers.

Parliament often grants highly discretionary powers to the Government. It does not know how they are going to be implemented in practice—*[Interruption.]* Of course, they are there to strike the balance on them as actually used, as opposed to Parliament framing them in very general terms and not always knowing how they will be used and what the impact on people's human rights may be.

Q26 **James Daly:** I fully accept that. I am not trying to contradict what you are saying. The courts can interpret this in whichever way they feel they can. It is not simply saying that if a Government say, "You do this. This is the policy," that is unfettered and the courts have to implement that policy. Are you saying that the balance between the convention rights that we have kept within this Bill still have to be considered together with the Act of Parliament the courts are interpreting?

All I am trying to say to you is that it seems to me that you can interpret this in whichever way you want, but it seems to me extraordinarily close to the current situation that we have at this moment in time. We can worry about this or worry about that, or say, "This might happen or that might happen," but, essentially, with different words, it is the same situation, isn't it?

Professor Phillipson: It is the same situation at the extreme end of deference. It is replacing a variable standard of deference that the courts apply taking into account a whole range of things, including the gravity of the interference with the convention rights, the importance of the aim being pursued by Parliament and so on, and the democratic credentials of the policy. With a blanket deference, it must be applied to every single situation, regardless of whether Parliament weighed up the matters, which it may not always have done. It replaces it with a legal fiction, the

idea that Parliament should be taken to have. It may be an old statute in which no one thought about these things.

Professor Elliott: It will require our courts to reach the conclusion that things are compatible with convention rights when things are, in fact, incompatible with convention rights.

Q27 **Dr Mullan:** Is it required? Is it a heavily weighted requirement? It is not the same thing, is it? The greatest possible deference is not the same as a requirement.

Professor Elliott: There are two requirements in clause 7(2). My assessment is that the effect of those requirements will, in many instances, require courts to reach conclusions. If they faithfully apply clause 7(2), the consequence of clause 7(2) is that courts will have no choice but to reach the conclusion that something is proportionate, applying, as Professor Phillipson says, the legal fiction that clause 7(2) employs in circumstances where, but for clause 7(2), the court would have concluded that it was not proportionate, and where the Strasbourg court may, subject to considerations of the margin of appreciation, conclude that it was disproportionate.

Q28 **Dr Mullan:** You would accept that someone else could say that it is not an absolute requirement and that you could possibly interpret it in a way that has that, even if reduced, room for manoeuvre.

Professor Elliott: As I said earlier, a lot turns on what we mean by "the greatest possible weight".

Q29 **Dr Mullan:** Yes, so it is open to interpretation.

Professor Elliott: The whole Bill is open to interpretation.

Q30 **Chair:** Who decides what the greatest possible weight is? What is that test, and where do you find it?

Professor Elliott: The Supreme Court will have to decide that.

Q31 **Chair:** It will have to, won't it? It goes well beyond the idea of normal parliamentary statutory interpretations, Pepper *v.* Hart and that sort of thing, doesn't it? It is a completely different kettle of fish.

Professor Phillipson: There are three levels of extra weight the courts are now required to build in. One is particular regard, which they still have to have to freedom of religion, imported from the Human Rights Act. One is great weight to freedom of expression and various other factors, the need to avoid various outcomes from imposing a positive obligation on a public authority, and then greatest possible weight in other areas. They have to juggle all of those as well as the normal quite difficult convention rights themselves.

The general view on this Bill, including people who like some of its policy aims, is that it will lead to a great deal of legal uncertainty and litigation.

Everyone agrees on that regardless of whether they like or do not like the Bill.

Q32 **Chair:** Professor Verdirame, what is your take on that?

Professor Verdirame: The word in clause 7(2) that feels a bit extreme is "decided". As you know, courts decide cases and Parliament decides on the law. It is fair to say, and, as we have heard, to a large degree courts are already accepting that principle, that in adopting legislation Parliament will have considered that that legislation strikes the appropriate balance between competing interests and competing rights. Inevitably, it will have been a consideration done at an abstract level because Parliament does not have the benefit of lived cases, real facts and circumstances.

In saying "decided", it seems to say it has already been decided and you do not need to decide anything any more. I suspect courts will probably take the view that what "decided" really means is decided in the abstract, and if they are faced with a case that suggests that the nature of the conflict is different, it is still open to them to find an incompatibility that Parliament could not have foreseen. "Decided" has a bit of a strange feel in that context. If it was "presumed" or "considered", it would also help in looking at "greatest possible weight" in a slightly different way.

It is clear what Parliament wants to do; it wants courts to have much more deference than they have at present. The indication is clear, but perhaps it could be made in language that is a bit more workable and not quite so definitive.

Chair: Okay, that is helpful.

Q33 **Rob Butler:** Professor Phillipson, you just touched on freedom of expression when you were talking about great weight, and freedom of expression is where I would like to move to next. Clause 4 states, under "Freedom of speech": "When determining a question which has arisen in connection with the right to freedom of speech, a court must give great weight to the importance of protecting the right." Professor Phillipson, what legal effect do you think that clause would have on the protection of the right to freedom of speech, and how would that change from the situation we have now?

Professor Phillipson: I am afraid the answer will not be as unequivocal and clear as you might like. First of all, it is important to note the central oddity of this clause; you only get great weight to freedom of speech essentially in relation to other private entities, but not on the whole of the state. The thing that most people are usually concerned about with free speech is the idea that they might be prosecuted for something that they say, and the Bill is crystal clear that the extra weight that it wants to build into free speech and other circumstances will not apply if the state is seeking to criminalise you for something you have said.

Bear in mind that some of our speech offences are pretty broad. At the moment, you can commit an offence by saying something that a court considers grossly offensive online, which has a relatively low bar; it does not require proof of any harm to anyone. That is the central oddity. It does not apply to criminal proceedings. Courts cannot take it into account when they are deciding whether a criminal offence is compatible with article 10 or not. They still apply bog standard article 10, but they cannot build in great weight precisely when you might think it is most needed.

Most people are most concerned about the state locking them up for something they might say, or possibly throwing them out of the country or not allowing them into the country in the first place. There have been several cases in which the Government have decided not to allow people in because of things they think they are going to say that they think are not conducive to the public good. The other exception is if the Government are trying to shut something down and are using obligations of confidentiality. That is the first odd point.

Most Bills of Rights across the world would look with astonishment at the idea that the one thing we do not have to worry about is the state restricting our freedom of expression. This extra weight that we are building in does not apply against the Government in general, or only in the most important circumstances such as criminal law.

Q34 **Rob Butler:** Is there not the overarching principle, which is then expanded further in clause 21, that this is to some extent protecting journalism and the right to cover stories—I should declare that I speak as a former journalist—in a way that in many other jurisdictions might not be the case, and what it is saying is that we are not heading towards greater automatic rights of privacy?

Professor Phillipson: Sure. I just wanted to get that out first because it is important. Journalists have to worry about criminal law as well—for example, contempt of court and a range of other things that they might fall foul of.

In relation to its operation against other people, first of all, there is a central problem with the fact that in general it is always open to domestic courts and domestic law to give greater importance to particular rights than Strasbourg would, and Strasbourg is always fine with that. The problem is that the precise area this Bill is aimed at is giving you greater protection against speech that invades other people's rights. The trouble is that, if you give extra weight to freedom of expression, it means you must give less weight to article 8 rights—for example, in the law of defamation or the law of privacy or the law of data protection. Therefore, this could, depending on how the courts apply it, lead to the UK being found to have violated article 8 on more occasions.

The central problem for the courts will be this. We have been told to apply great weight to freedom of expression, albeit with certain large exceptions. Does that mean we are to unsettle the whole of the law of

defamation that Parliament considered quite recently and in detail in 2013 with the Defamation Act, after a long campaign and consultations? That was a very big public debate. I took some part in it. It was a very careful debate about how to weigh those two important rights. The courts might be reluctant to think that Parliament really wished to unsettle through this rather vague clause the detailed balance that it has struck in various areas of law, including recently in data protection in the 2018 Data Protection Act, which strikes quite a careful balance between data protection rights and freedom of speech. There will be an uncertainty there.

In particular, does Parliament really want them to go so far as to mean that the UK starts losing cases for breach of article 8 in Strasbourg? Strasbourg has a clear principle that articles 8 and 10 are to start off presumptively equal, and you decide which is more important in particular cases. The way they do that is that not all speech is equally important, and we probably all agree with that. The Government agree with it because in the Online Safety Bill, what is called "speech of democratic importance" is given particular value, but things like pornography, commercial advertising, or some forms of celebrity gossip—our courts have said this very clearly, as has the Strasbourg court and other courts—are not as important as speech of political or democratic importance.

What is odd about this is that courts will have a clearly established understanding that they have to look at speech contextually, and at what interests it is serving, against this Bill, which is trying to give all speech, but not speech against the Government, extra great weight. What exactly are they meant to do with that? Like other provisions we have looked at, the first most important answer is that the courts will be faced with a real puzzle. If they go far with this, it means major changes to various areas of law, some of which Parliament settled quite recently, which they will not be sure are wanted here, and there will be the problem of breaching article 8, effectively, if they take it too far.

On the other hand, they will feel they have to do something with it, and this applies to many areas where the courts will be reluctant to have the UK losing more cases at Strasbourg because of decisions they make. Equally, they will feel they have to do something with this Bill. They are not just going to ignore it or read it all down. They take very seriously giving effect to Parliament's intentions, and they are going to be presented with a real dilemma.

The provision on journalists' sources is at least clearer and more specific than section 22, although it is a bit odd to have that in a Bill of Rights because it is normally in specific legislation. That is the problem. This seems to cut across the clear understanding that you balance speech against other interests by looking at the impact on the other interests—for example, reputations in defamation—and by looking at the kind of speech it is and whether it is speech of public importance or whether it is

a lower form of speech, which most courts regard as of less significance. That is the problem with clause 4.

Q35 **Rob Butler:** Professor Elliott, do you have a similar analysis?

Professor Elliott: I cannot really add to that except to say that it is part of a wider strategy in the Bill of what I have called "judicial micromanagement", where the Bill is directing courts in ways that the Human Rights Act has not and, indeed, in ways that Parliament generally has not in terms of how they should be deciding cases, rather than simply requiring the courts to form their own approach. If you look at clauses 4 to 8, you find that is a general approach.

Of course, it is perfectly in order for Parliament to do that. I am not suggesting that it is improper, but it brings us back once again to the wider question of the degree of alignment that Parliament wants to see with the Strasbourg system, the degree of divergence that it wants to see, and how that divergence will be managed if there is an overall intention here to have what seems to me to be quite a significant degree of divergence, certainly when you look at things like clause 5, which will prevent domestic courts often from giving effect to positive obligations.

Q36 **Rob Butler:** I will let others come on to clause 5. To go back to the beginning of your response, you talked about the influence or the level of control of Parliament, but isn't the argument that what the Bill does is seek primacy for the democratically elected representatives of the people and counter what may have been perceived as the courts sometimes going beyond what was their place? I have tried to be as simplistic as possible.

Professor Elliott: I think that is a very fair summary. That is clearly the policy of the Bill.

Q37 **Rob Butler:** Do you disagree with that?

Professor Elliott: I do not express a view on that. I do not think it is inherently improper. In a democracy, there are a number of considerations that need to be taken into account in coming to a view about what an acceptable regime is for protecting individuals' rights.

Q38 **Rob Butler:** Are you suggesting that this Bill makes this country less democratic?

Professor Elliott: Not at all. I am suggesting that the Bill makes some quite clear and deliberate choices about the degree to which it wants to have the human rights regime in this country aligned with the European human rights regime, and that the greater the degree of misalignment, the more there will be other issues that need to be confronted in terms of what happens.

In the Government's impact assessment, they recognise that a likely consequence of the Bill is that more cases will be lost by the UK in the European Court of Human Rights. That is a policy choice that is open to

Parliament to make. The Government recognise in their own impact assessment that a very likely consequence of that policy choice is that the UK will lose more cases in the Strasbourg court, at which point a further policy choice will have to be made about how the UK responds to that. Does it give way to Strasbourg and amend domestic law, or does it take a different path?

Q39 **Rob Butler:** Understood. I am mindful of the time, so, briefly, Professor Verdirame, do you want to add anything on clause 4 and, specifically, freedom of expression?

Professor Verdirame: Not on freedom of expression.

Q40 **Dr Mullan:** In other states, what tends to happen? How does that tend to play out? What are the examples? What happens if they choose not to amend legislation?

Professor Elliott: In terms of how different states balance human rights protection and democratic concerns?

Q41 **Dr Mullan:** With a greater frequency of the court ruling against the state and then the state choosing not to amend legislation in response, what in the real world tends to happen next? I don't know.

Professor Elliott: Do you mean if the European Court rules against a Council of Europe state and the Council of Europe state chooses not to fall into line with that?

Dr Mullan: Yes.

Professor Elliott: There is a mechanism within the Council of Europe where compliance is monitored. The UK found itself in this position in relation to prisoner voting over quite a long period of time. There is a process that is followed whereby the Council of Europe institutions look periodically to see whether or not the state has implemented the changes to national arrangements that the judgment requires. I am sure it is true—I don't have the figures in front of me—that different Council of Europe states will have different track records in their degree of compliance, and that the UK has a very good track record in compliance.

Q42 **Dr Mullan:** What would be typical for France and Germany? Would they have two or three? None?

Professor Elliott: I would have to check that for you.

Chair: Perhaps one or other of you could supply the relevant data, which I am sure is published by the Council of Europe, as I recall it from when I was on the Parliamentary Assembly.

Q43 **Laura Farris:** I want to ask about clause 5 on positive obligations. A grave concern I have is in relation to some of the equivalent cases brought by organisations like the Centre for Women's Justice in reliance on article 3 rights. The John Worboys case is the one that has had the most ventilation. Equally, I was told by the Centre for Women's Justice

that the London Victims' Commissioner, Claire Waxman, relied on article 3 for exactly the same type of claim in relation to a stalking matter, and that it is frequently deployed in the context of domestic abuse. I raised this with the Lord Chancellor last night, and he said you should not read clause 5 as in any way inhibiting a future Worboys-style challenge.

When I read that clause and the explanatory notes, the only sensible construction of it is as seriously constraining the right of the individual to require the state to do anything. No one would deny, particularly at this moment in time, that there have been deep and profound failings by the police, particularly the Metropolitan Police, which are topical at the moment.

It is a post-commencement restriction, and I have two questions. In practical terms, do you think that the court would feel constrained by the new provisions of clause 5 to avoid coming to a similar conclusion in equivalent cases? It does not have to be Worboys; it is just that that case was the flagship one. Secondly, am I correct in understanding it as something that would prohibit the court ever in the future from conferring some slightly derivative but basically equivalent duty on organisations like the police where they had failed and yet there had not been a similar piece of litigation on that question?

Professor Elliott: It all depends on when the positive obligation in question came to light, by which I mean was interpreted into existence by the European Court or by a domestic court. If the positive obligation comes to light after the Bill of Rights enters into force, clause 5(1) straightforwardly prohibits domestic courts from giving effect to those positive obligations. A simple way to understand it is that new positive obligations will not be enforceable by domestic courts. Old positive obligations—in other words, obligations that were known about when the Bill of Rights came into effect—can still be enforced, but only in limited circumstances. The court has to give great weight to the need to avoid, by giving effect to positive obligations, a range of matters.

We cannot be certain, as we said about a number of provisions, how the domestic courts will interpret this, but it seems to me significantly less likely that a domestic court would be in a position to decide a case like Worboys in the way that the Supreme Court decided the Worboys case. Among other things to which courts have to give great weight when deciding whether to give effect to old positive obligations are things like an impact on a public authority's ability to perform its functions, respect for the professional judgments and operational decisions that public bodies make, and anything that might undermine the police's ability to determine their own operational priorities. It seems clear that the kind of positive obligation that Worboys enforced would affect the police's ability to determine their own operational priorities. My assessment is that judgments like Worboys would be much less likely under the Bill of Rights.

Q44 **Laura Farris:** Can I ask one of you a follow-up question? In a case of

that nature where in law there is no claim of negligence against the police because that is the effect of Hill and the Chief Constable of West Yorkshire, what alternative course of action might a claimant have if there was no recourse to the Human Rights Act or a common law action of negligence?

Professor Phillipson: None, as far as I know. Those are the two main—

Q45 **Laura Farris:** So without remedy. Sorry, I am being brief because we are over time. I will be really quick with my next question, which is about deportation of foreign national offenders.

When the immigration rules changed in 2012, they placed a strong duty on the court to deport anybody who had served more than 12 months unless there were exceptional circumstances, and there have been various cases that reached the Court of Appeal where that has been tested. I have not found any example of the Court of Appeal—I could only access the appellate-level decisions—failing to deport. Are you aware of any high-profile cases in the post-2014 period, after that change in the rules, that reveal why this is a necessary change in the law?

Professor Verdirame: I have not done a search. It is not something I have researched actively.

Q46 **Laura Farris:** You can probably tell what my question is. Parliament moved to make it more rigorous in 2012. I think that became effective in 2014. I have yet to hear anything asserted to show that that change did not work. I am asking you as professors whether you have examples of it not working.

Professor Phillipson: It is not my specific area of research, but I gave a paper on this at an event by the Public Law Project, and they had a specialist in the area. They said that, given the recent legislative changes, it is already extremely hard to rely on article 8 in deportation, and successful reliance is usually only possible in quite extreme circumstances. They had not seen the legislation at this point, which probably goes further than we had expected, but they thought the Government's consultation paper was written in a way that did not reflect where the law was now in terms of how far Parliament had already acted to make more difficult reliance on article 8 to resist deportation. They thought, essentially, that there was not really a problem at this point because Parliament had already dealt with it.

Laura Farris: I had more questions, but there is no time.

Chair: Go ahead.

Q47 **Laura Farris:** My final question is this. Parliament has acted on this issue, and it feels like it is not reflected or respected in the Bill itself. Immigration rules changed quite significantly 10 years ago. In some ways, we are showing great deference to the decisions of Parliament and, in some ways, we are ignoring them as if they never happened. I'm not quite sure why. I don't really understand.

Q48 **Chair:** Can anybody make sense of the logic behind the approach?

Professor Elliott: It is simply that, although, as Professor Phillipson explained, it is now very difficult to resist deportation in these circumstances on article 8 grounds, the intention here is to, essentially, place that beyond doubt.

Q49 **Laura Farris:** Typically, for the ex-convict who says, "I have a very young family and they are not working and they have no money and there are babies," that is not enough. You are normally deported on that. It already takes something much more than just identifying a family and certain vulnerabilities to meet the threshold.

Professor Verdirame: My impression of those three paragraphs in clause 8—manifest harm, definition of "extreme", et cetera—was that they had some particular case law in mind. I have not had the time to go back and look at exactly how they were trying to raise the bar.

Q50 **Laura Farris:** You are right, but it is quite striking. It is almost a bit unprofessional in the drafting. At subsection (3), "it is exceptional and overwhelming," but I do not see those words defined; therefore they will have to be developed by the court. Why would you need "overwhelming" to add to "exceptional" when the courts already understand what is required of them? I felt almost that it had been written by a layperson rather than a lawyer.

Professor Verdirame: I thought paragraph 2 was already enough to hammer the point, and paragraphs 3 and 4 perhaps were a double hammer.

Q51 **Laura Farris:** Finally, on clause 14, I have questions in relation to the Baha Mousa inquiry by Sir William Gage in 2011. Of course, I understand what the Government are driving at; they do not want vexatious claims arising from the heat of battle. You will recall that it was only through recourse to the Human Rights Act that Baha Mousa's family were able to establish what happened in Basra. They would not have been able to take any other action against the MOD because it declined to investigate what happened. I put this question to the Secretary of State when he made his statement, but I had not seen the Bill. He made an oral statement before the Bill had been published. To be absolutely fair, I think his answer was that it is better that we find resolution of issues like this without going to court. Would you be able to help us with our understanding of how you think this kind of thing could be resolved or how the family could get justice for something like this in the context of clause 14 applying?

Professor Verdirame: Clause 14 cannot be commenced pursuant to clause 39(3) until the Secretary of State is satisfied that there is a convention-compliant mechanism, a future Act or otherwise. Clause 14 only tells half the story. There is a problem with clause 14. I have to declare an interest in regard to that problem because I am counsel for Ukraine in proceedings against Russia in Strasbourg.

The case that Ukraine is advancing is that Russia is violating human rights in Ukraine on a very large scale. Clause 14 says, although again it is half the story, that for overseas military operations convention rights are not engaged. It is a problematic half-story, certainly from the point of view of the kind of case that I have just described, and it is certainly hoped that a lot of states will intervene in support of Ukraine. It will be quite difficult for the United Kingdom to support Ukraine in that position given what clause 14 appears to be saying. There are lots of disagreements about the court, but something like that is about the core mission of this treaty and of that institution. It is preventing war in Europe and violations on the scale that we are all witnessing in Ukraine.

It will be quite important for this issue to be clarified because it is very important for the UK to be saying quite robustly that violations of human rights within the convention territory must be something for which a state like Russia remains responsible. All it needs to do is add the words "or in the territory or outside the territory of a high-contracting state" in 14(1), and then every member state of the convention is fully covered.

Professor Elliott: Can I add a very brief footnote? I am less sanguine about this, in that clause 39(3) does not—certainly not in terms—require a convention-compliant regime to be put in place; it simply requires a Secretary of State to be satisfied that activating clauses 13 and 14 is consistent with the UK's obligations under the convention. Arguably, the Secretary of State might be satisfied of that without going as far as has been suggested.

Laura Farris: Thank you very much.

Chair: That is extremely helpful. We have taken a bit longer than we expected, but it has been extremely useful. I am sure there is more we could cover if we wanted to. It is useful for us as a Committee to think of some of the practical implications, as opposed to some of the policy matters. I have followed a number of you in various channels and formats, so it is very useful to have that in evidence in front of us. We are grateful to you. The session is concluded.