



Select Committee on the Constitution

Corrected oral evidence: Constitutional implications of Covid-19

Wednesday 9 December 2020

10.15 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Faulks QC; Baroness Fookes; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Lord Wallace of Tankerness.

Evidence Session No. 17

Virtual Proceeding

Questions 229 - 242

Witnesses

I: Councillor James Jamieson, Chairman, Local Government Association; Councillor Susan Hinchcliffe, Chair, West Yorkshire Combined Authority.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Councillor James Jamieson and Councillor Susan Hinchcliffe.

Q229 **The Chair:** This is the Constitution Committee of the House of Lords, and this morning we are looking at the use and scrutiny of emergency powers during the pandemic. Our witnesses this morning are Councillor Susan Hinchcliffe, who is chair of West Yorkshire Combined Authority and leader of Bradford Council, and Councillor James Jamieson, who is chair of the Local Government Association and leader of Central Bedfordshire Council. Good morning to you both, and thank you for joining us.

Councillor James Jamieson: Good morning.

The Chair: Can we start with a very general question? We will come on to some detail later. What do you think have been the key challenges for local authorities during the last few months in responding to the legal requirements during this pandemic? We have heard a lot of anecdotal information, but it would be helpful if we can get it directly from you.

Councillor James Jamieson: If you will give me leave, I would like to take the opportunity to pay tribute to the work of councils, councillors and our staff throughout the country, who have gone above and beyond. It is important to recognise that before I move on to your key question about the challenges.

There have been three key challenges. To some extent, these have been addressed as we have progressed. The first challenge was the need for much greater flexibility in delivering our statutory responsibilities. The pandemic brought on a series of challenges, which made some things very difficult to do, and we needed some flexibility. I was pleased that the Government introduced those flexibilities in a number of areas to enable us to reprioritise and redeploy our resources.

One example is some of the easements in relation to the Care Act. Clearly, councils are committed to doing all that they can to support people and their communities, and I understand why carers and users of social care had concerns about that. The flexibility helped us, and it was used only in a very small way. About eight out of 152 councils enacted those easements, and mostly for only a very short space of time or for one very specific service. We were able to do across the board in a number of areas.

Another example is the deferring of Ofsted inspections for a period of time while we are all trying to get on with supporting our vulnerable children and schools.

Under the Care Act, we still had the duty to meet needs, and a failure to do so would have been a breach of someone's personal human rights. The rules were still there, but we had a bit more flexibility and scope, which was important. It is important to recognise that the Care Act and associated guidance have stood up well, given how few councils needed to enact the easements. This suggests that there is already enough

flexibility within the Act to enable councils to meet their duties, albeit in different ways. That willingness is one of the things that is important as we move on. We have learned how to do things better and have a more flexible attitude to things. That is very important and we need to take that with us.

The second area of challenge was the local democratic process. Quite clearly, social distancing put restrictions in place to protect the public and reduce the spread of Covid. That presented issues for council meetings, councillors turning up to vote every six months and so forth. We are very pleased that in response to the representations from the LGA about the Coronavirus Act, the Government amended legislation to make provisions for the Secretary of State to lay regulations so that councillors could attend, speak at, vote, or otherwise participate in local authority meetings without all being in the same place. That gave us the freedom to postpone certain meetings that were not deemed essential, but more importantly to allow remote meetings. We have a perfect example here today. That has been very important.

We also raised concerns about holding local elections and by-elections. All elections up to the May 2021 elections and the intervening by-elections have now been postponed, but we are now preparing for the 2021 local elections in a Covid-safe manner. That will require some additional regulatory changes. We are not quite sure exactly what the landscape will be like in May 2021. We are all very hopeful about the vaccine rollout, but I think it is only reasonable to assume that there will still be some significant restrictions on us, and we will need some regulatory changes.

The third area of challenge was enforcing social distancing. It is perfectly understandable that government has produced a series of pieces of guidance and then legislation on social distancing, the way in which businesses can operate, which businesses can open and so forth. We have found that there has been a bit of catch-up over that whole period.

Initially, guidance was produced, and then slowly the guidance became legislation, but even when it became legislation we were still dealing with local authorities having powers—historic licensing powers and so forth—which were not suitable for current events. Under health and safety legislation, for instance, you might have to wait 28 days before you can carry out enforcement on premises. I am very pleased with the recent legislation that puts much more enforcement power directly with local government, so that we can issue a warning notice, and if that is not adhered to we can act very quickly

That is important. As an example, there was a lot of guidance on things like hospitality premises having to take note of who was there and their home address. A number of businesses, including one national pub chain, refused to do so, because it was guidance and you cannot enforce guidance in a quick and effective way, so that was made law. However, even with it being made law, it is only now that we have the new regulations that enable us to go into premises, check and issue a notice that forces businesses to comply within 48 hours.

I think we have got to the right place. It has just taken quite a long time. The discrepancy between guidance, legislation and the ability to enforce has troubled us, but, as I say, I think we have got there in the end. I am pleased that we have done that.

The Chair: Thank you. Councillor Hinchcliffe, can I turn to you for your experience from West Yorkshire?

Councillor Susan Hinchcliffe: Thank you. First, I echo what Councillor Jamieson said about council officers, particularly those unsung heroes, the environmental health officers, who are like gold dust these days, I have to say. They are very difficult to recruit because we are all so desperate for them. That is just a shout-out to environmental health officers and all they have done during this pandemic.

There are a few things from me. First, the short notice of the new guidance or legislation, whatever it is, has been really hard for us as councillors to grapple with. Often when new information has been announced on the news it has been the first time I have seen it. Therefore, we all work overnight to try to figure out how the guidance will work, translate that into documents, press releases and communications for residents and businesses, and try to get it out the next morning. Obviously, this is a reactive situation, but having to translate guidance into action as soon as it has been announced has put pressure on councils.

The rules have changed rapidly and frequently. If you are somewhere like West Yorkshire, which has been under local restrictions and national restrictions to varying degrees since the beginning of March, you will have sometimes had changes in rules every week. Recently, we had a rule change at two days' notice, because at one point the Government said that we were going to be in tier 3 and then changed their minds and two days later said we going into lockdown nationally. We had briefed everybody on the new rules for tier 3, but we then had to re-brief the whole district and the whole of West Yorkshire on new rules for the national lockdown. That kind of confusion is hard for council officers and obviously has an impact on our residents and businesses.

Short notice is really hard. Where that was brought into sharp focus and had different ramifications was when the Government brought in new rules two hours before Eid started. First of all, that was impossible. A lot of people had already gone to bed, ready for Eid the next day, so it was unrealistic to expect them to adapt to new rules within a few hours. Secondly, it undermined people's upholding of those rules, because it looked culturally insensitive to people who were obviously about to go into something like Christmas Day. That is a lesson that the Government should learn: that there are different cultures in this country, and all have to be respected. If the Government want people to follow rules, they have to be open, transparent, honest, and be open for everybody. We all have to abide by those rules, but people have to feel that they have some connection with government and that government recognises their

concerns. We cannot enforce them with every single person. It is essentially by consent, is it not, that we follow these rules?

I echo what Councillor Jamieson said about the difference between guidance and legislation. That has been really hard for us all to get to grips with. I have been given a couple of examples by our mental health officers. One is the difference between masks and visors. We, as council officers and councils, and the police can enforce masks but not visors. It is through health and safety legislation that you enforce visors, and that takes time to do. We can go in and sort the masks out, but we cannot sort the visors out because that is guidance, which needs to go through health and safety legislation.

There is also an issue with fines. We have talked about going into the different organisations that may not be Covid-compliant. It is cheaper to obstruct officers from going in—the fine is about £100—than it is to let them in and have them find that you are not Covid-compliant, which could be a £1,000 fine. Getting access to some organisations can be quite difficult, because obstruction is cheaper than enforcement of the guidance.

Finally, I would like to talk about rule fatigue. The rules still change quite frequently because they are different in different places, and people are just tired of it. They are tired of the rules. They are tired of the restrictions put on their lives, but they are also tired of things changing all the time. We, as councillors, are always urging our residents to stick with it. As Councillor Jamieson said, there is a vaccine just around the corner, and we are really keen for people to keep consenting to comply with these rules, which largely they do. I think the public have been marvellous in how they have stuck with it and supported us in trying to keep infection rates down, but we need to keep going a bit longer.

You asked what the challenges have been, and I have touched on where I think we are at the moment and what has happened over the last nine months.

The Chair: Thank you very much. We may want to go into some of those points in more detail, with some examples.

Q230 **Lord Howarth of Newport:** Good morning. You have already touched on some of the aspects of the Care Act easements and health and safety legislation that I want to ask you about.

More broadly, as the Government have taken emergency measures and applied them, have they struck an appropriate balance of power between national and local government? Have local authorities had the powers and indeed the resources they need to respond to the specific challenges of the pandemic in their areas?

Councillor James Jamieson: We have to recognise that this is a difficult one to get right. In principle, I represent local government, and I will always say that local government needs more money and more powers.

At the start of this pandemic, it was very centrally run, and, as Susan was saying earlier, a lot of announcements were made very rapidly. However, to be fair, we have made a lot of representations to government, MHCLG has been engaging with us, and we have come to what I would say is a more balanced position in the powers that we have. There are still discrepancies—Susan mentioned the interesting discrepancy between visors and masks—so the balance is not perfect yet

Quite clearly, we were not in the right position at the outset. We did not have the right powers. We have got there over time, and that has come about with a lot of pressing from the Local Government Association. The powers to issue directions under the No. 3 regulations, which are all to do with public health, are very high thresholds. However, things have improved, and we are pleased that MHCLG and the Office for Product Safety and Standards have been working collaboratively since the summer. They brought forward the new enforcement powers to ensure compliance with Covid-19 regulations.

I would also make the point, which has been accepted by government, that local councils are not policemen. Where we enforce, we enforce against businesses or premises. That has been recognised and accepted, and it is the traditional role of councils. The enforcement of planning or environmental health regulations is always against a business or premises, and we have maintained that. It is a police matter if people are not complying with something, and we would not want the powers to enforce with regard to people. That should remain a police matter.

We have asked for the introduction of a public health objective in the Licensing Act in the context of Covid-19. This would enable councils to take action where premises are not protecting public health during the pandemic—for example, requiring a business to apply new conditions to operate safely, or in worst cases revoking a licence. I think there are a few more issues there.

We have moved a long way, so I am reasonably comfortable about the powers that we have to enforce stuff. As Susan was saying earlier, it is the rapidity of new guidance and new legislation that sometimes catches us out, and we need the early engagement that allows us to put in place the appropriate enforcement tools and to effectively advertise and make the public aware of them. At the end of the day, you can give us all the enforcement powers you like, but if you do not take the public with you, they are not going to obey. I do agree that there is an element of rule fatigue creeping in. Thank you.

Q231 **The Chair:** Councillor Hinchcliffe, do you think there has been sufficient early engagement?

Councillor Susan Hinchcliffe: I will always argue that councils and councillors and the work that we do needs to have more respect from national government, and we need to be seen as more equal partners in any activity. Obviously, it has been particularly to the fore with Covid and the response to it, but there is value in local councils knowing their

communities. Bradford, for example, has 8,500 staff and we have a district of 537,000 people. We are absolutely in tune with everything that is happening across that district, and we need to be used to really understand what is happening there and tailor action accordingly. If anything comes out of this, it would be a benefit if government better understood what we do.

It has changed throughout. At the beginning, we were very much in receipt of messages from national government, which go from the Health Secretary to DHSC, to PHE, to PHE regional, to my chief executive, and then to me. That is the chain of command, and it is quite a long chain of command. Something to short-circuit that to get some loopback of learning between councils and national government would have been very helpful. It was too elongated to get the value of connectivity.

Later on, they brought in MPs to sit in on the decision-making and to decide which wards should be under restrictions and which should not be. That was a strange step to take. I am the council leader, so I am a councillor for the whole district. I have five MPs, but they are accountable for only one area of it. They are not accountable for public health in the district; they are accountable for the decisions they make on your behalf in Parliament.

Therefore, there was some confusion about national versus local decision-making and how that worked at local level, which I do not think was very helpful. That has gone and it is not quite at that level now. Now they are working at regional level, which is probably more helpful and gives greater clarity as well as more fairness. It sounds fairer when everybody is doing the same thing.

There are some improvements to be made so that local government and national government can work better together. It needs mutual respect and consideration.

Q232 Lord Howarth of Newport: I want to come back to one particular instance, if I may: the test, trace and isolate strategy. There has been much comment that central government and its agencies have failed to involve the environmental health officers of local authorities with their detailed local knowledge. Do you see that as an instance of less than perfect joint working between national and local government?

The Chair: Councillor Hinchcliffe, I think that is the area you were referring to.

Councillor Susan Hinchcliffe: Yes, and it is not just the environmental health officers. I would say that it is councils per se. Local test and trace has been really useful, and we set it up without any government funding, but it has increased our contact rates of positive cases from 73% to 86%, which has made a real difference. That should have been done more proactively and earlier.

We were pushing to say that every local authority in the country needs an interface with the national system to make sure we can achieve that

last mile of contact that is needed to try to keep the infection rate down. It was very sluggish in getting going. We pushed to get it going. We finally got permission to use the national system and have that local interface, but it could have been done faster. That is not just about environmental health officers; it is about everybody. We have set up separate teams in the council through our contact centre and our neighbourhood warden service, but it could have been done more quickly.

We are very centralised as a country, more so than other countries in Europe. We have the default position that we start from London and then it is one size fits all everywhere. I am a passionate advocate for devolution and the value that creates for our communities for all sorts of reasons, and this is one really clear area where more devolution of decision-making and more connectivity and action with local authorities could have got on top of the issue more quickly.

Q233 Lord Dunlop: Can I just explore the issue of legal clarity in a little more detail? As we have heard from both of you, throughout the pandemic there has been an absolute blizzard of regulations, and they have been introduced at speed. I want to ask about the channels of communication and consultation between central government and local authorities. You obviously have a lot of practical experience and local knowledge that can help to inform the regulations.

Could you tell us in a bit more detail how the legal changes that have been introduced have been communicated to local authorities? Has it been effective? I think you have indicated that you have not really had sufficient time to prepare for changes coming into force. What could have been done differently to improve the situation? For example, would it have been possible to share and draft regulations earlier? What lessons can we learn, and what improvements can be made?

Councillor James Jamieson: We alluded to this earlier. There has been considerable frustration at the tendency for announcements that have implications for local government to be briefed to the press before any consultation with councils. That has included some government initiatives like Covid marshals and the moving of local areas into tighter restrictions. There have definitely been missed opportunities for local government to help to get those initiatives right and amplify their impact. We were not made aware of the NHS app earlier. We could have helped to promote it. There have been multiple instances of that kind of thing.

Throughout the pandemic, we have seen things improve, which is not entirely surprising. No one has done this before, so I would not expect everybody to have got it right from day one. Certainly, communications have improved, and weekly virtual meetings have been held by the Cabinet Office and DHSC communications teams. There have been opportunities for information sharing and heads-ups on government initiatives and cascading of comms material. MHCLG has started having more meetings and more data sharing.

The key point for us every time is to engage early and to speak to local government. There are ample existing forums that can be used to have that conversation. Nationally, we can do it through the LGA. Regional matters can be done at a regional level. I do think that we need that engagement early. I appreciate that we are in a fast-moving field, and we are not expecting to be engaged a month beforehand, but communication before public announcements would be quite nice. Even two or three days can make a huge difference. There has been that sense of councils being done to, which has caused frustration.

The one message that I think we would both give is that, whatever happens, engaging with local government at the earliest possible opportunity when publishing new regulations is critical to making them work better and to having better regulations. We need to think through how regulations work when they hit the ground.

Councillor Susan Hinchcliffe: I agree. Obviously, the crisis has been national, so you can understand the speed that government needs to work at. However, there has been too much headline-driven policy-making. They announce something, and then we all have to catch up to see what it means in practice and how it gets delivered. You can think of local government as essentially the delivery arm to our residents, and we absolutely need to be informed as early as possible to be able to make sure that some of those headlines actually work in practice, rather than trying to retrofit them.

Legislation and trying to unravel it has been a headache for our legal teams. They sent me a document about venues last night. It is 20 pages of legalese, which they have translated so that we can send it out to residents and businesses. Obviously, a 20-page-long document is really hard for residents and businesses to get their heads around. There are some practical problems with it.

Another thing government did at the beginning—it does this less now, for which I am grateful—was to make things up as we went. There was no uniform national framework within which we were operating. It was very ad hoc—area by area. At one point, gyms were closed in Bradford but open in Oldham, and there was no rationale for that. It was just that there had been a different conversation at a different time. That led to people thinking that it was unfair and undermining the system. If they had just sorted something out early on and said, “Look, this is the national framework that we are working in. If we have to go to economic restrictions, these are the different levels we will have”, that would have been clearer, we would have known exactly what to do and we would have been able to prepare for the different tiers and then press the button for whichever tier we were going to be in.

We have that more now, and I think it is more settled now in that we know what restrictions are in which tier, but in the beginning it was not like that. Things were being taken in and out, pushed and pulled. If people do not understand the rationale behind why something is in and why something is out, it is very difficult for us to enforce and educate and

for people to understand why they should comply. We have got to a better place now, but certainly in the beginning it was too ad hoc and there were things thrown in willy-nilly without really understanding the impact.

- Q234 **Lord Dunlop:** Can I just ask a specific question about Public Health England? My understanding is that its role is to provide advice and support to local authorities. Could you comment on the effectiveness of that role, the relationship with directors of public health and how that has worked throughout this pandemic?

Councillor Susan Hinchcliffe: Our directors of public health certainly rely on Public Health England and speak well of it. A local frustration for me is that Public Health England covers the north-east, which includes Yorkshire and Humber, which is far too big area, I would suggest. I would prefer just one organisation for Yorkshire and Humber and another for the north-east; they are both big areas in their own right. Public Health England provides local expertise and intelligence—statistics and data that we have found useful.

I am not sure how it works when it gets further up the chain between PHE and DHSE, and then to the Minister. I outlined earlier the long chain of command and communication between me and the Secretary of State for Health. You would have to ask them about how that works at the government end of the command chain.

Councillor James Jamieson: One thing that this pandemic has really highlighted is the benefit of public health returning to local government. Having our own directors of public health has been a huge help. We have had much better communications and understanding of what is going on at the local level, because it is all at the local level. Again, I can praise the work of our public health teams. Devolving public health to local government has been a huge benefit. Other than that, I echo Councillor Hinchcliffe's comments.

- Q235 **Lord Faulks:** You have talked about the problems of communication between central and local government, and that sometimes the last-minute changes have made it particularly challenging. I want to ask for your views about the position of members of the public, who, as you quite rightly say, are not used to reading 20-page documents. How do you think it has been for them, particularly in trying to distinguish between legally enforceable offences and mere guidance? Would it ever have been possible to be very clear?

Councillor James Jamieson: Getting the public both to understand and to be onboard with doing the right thing is a very significant issue. The vast majority of the public want to do the right thing, but the huge number of changes to regulations and the complexity of those regulations—as you say, some is guidance and some is mandatory—have caused significant problems in the public's understanding and support. While councils have gone to great lengths to communicate the restrictions, the sheer complexity has genuinely caused problems with

regard to people wanting to adhere to the rules and to sheer public sheer fatigue with, "This rule applies today, and there is a different rule tomorrow", and almost throwing their hands up in the air. The clearer and more consistent you can make things, the better.

Also, there is no point in not making guidance mandatory. I gave you the example earlier of guidance on hospitality venues recording people's names. That did not work. You have to make certain things mandatory. There needs to be much greater clarity and much less complexity; stuff should not be nuanced.

We talked earlier about the tiering system. It certainly helps that we now have greater clarity about whether a gym is allowed open or not in tier 3, what is a substantial meal, and so forth. The clearer it can be and the more consistent it can be, the better, because that is the only way the public will take it on board.

One of the things that a number of councils have done, and which is working quite well, is to have community champions to explain the rules and regulations to their local communities, and to give feedback on the state of the infection rate and so forth. That has been very useful. It is a much more localised message, which is helping. Again, the clearer the message, the better.

Councillor Susan Hinchcliffe: Following on from what Councillor Jamieson said, our comms teams have been massively overworked for months now, churning out lots of different messages in lots of different community languages, and through different media. It is not just putting a press release out; it is getting things out on WhatsApp, on social media, on Facebook, on Twitter, through community organisations, door knocking, leafleting, anything we can think of, and different ways of getting through to people, because people consume information in different ways.

We have done a lot of communication. You have to repeat a message several times for people to understand and get the clarity of it. We have repeated the three key messages of hands, face, space, and those messages have probably got through because they have been consistent from the beginning. The consistency and simplicity of the message is important.

What works is a national lockdown. Everybody follows the rules because everybody is doing the same thing at the same time. We saw that in the first lockdown and in the second. The minute you start to get that into smaller and smaller areas, it becomes more confusing and more difficult to understand. We are at regional level, but at one point in Bradford district we were at ward level. Then people ask, "Where does my ward end? Which ward am I in? Why am I in it? Why is my neighbour not in it?" The larger the geography, the easier it is to follow the consistency and simplicity of the message. The smaller it is, the more confused it is. Of course, the length of time you are in it obviously also makes a difference.

Lord Faulks: That is very clear. Thank you very much.

Q236 **Lord Wallace of Tankerness:** My question follows on from what Councillor Hinchcliffe has just said. You are talking about the important role of local communications, but many people get their communications through national news bulletins, or national BBC internet sites. I am very aware that there are divergences between different constituent parts of the United Kingdom, as well as within England in different tiers. What impact have you noticed that having on the clarity of the message getting through, and have there been any particular impacts on the workings of local government because of these differences, both within the United Kingdom and within England?

Councillor James Jamieson: This is difficult in many ways. Covid has spread differently across the UK. Infection rates have been very different, and they have varied at different times. Therefore, rightly, there needs to be a differentiated approach to restrictions and other things across the UK.

Polling by the LGA about resident satisfaction with councils from October 2020 suggests that the public agree that local government is best placed to decide what the appropriate restrictions are in local areas. Six out of 10 residents say that we should be responsible for running local tracing, which I tend to agree with. However, it is recognised that the virus does not respect boundaries, and you cannot tell the difference between one ward and the next, or necessarily between one council and another. We need to work hand in hand and look at where people live, work, move, and have their leisure.

We recognised that this was not easy. We made a number of recommendations to the Government on the new tier system for 2 December, which were that there should be a standardised set of instructions for each tier, a clear published framework for setting out the different tier levels with details of criteria and considerations to be used, and that they should be based on local public health footprints. Government did not accept all the recommendations we made, but certainly the second set of tiering has been much more standardised and much clearer about which areas are included, which I think has helped people to understand. It would have been very nice if that had come in earlier, because that would have avoided some confused messaging earlier in the process.

Councillor Susan Hinchcliffe: You are absolutely right about the dominance in the national media, and that has been a struggle. I certainly got frustrated about the rule of six, for example. The national media, the Prime Minister and southern MPs all talked a lot about the rule of six, but it was largely irrelevant in West Yorkshire because we were following different rules. That was frustrating for me, because I wanted people to realise that what was being said was not relevant to them and that they needed to follow our local messages. Whatever the Government say nationally, they always need to say, "This doesn't apply everywhere,

so watch your local messages for how you should follow the regulation". Nuanced messages would have been more helpful.

- Q237 **Lord Beith:** I got the clear impression from earlier answers that neither of you is very keen on subdividing the kinds of areas that have been used for the tiers, even though in some cases they are very large and do not necessarily reflect travel-to-work areas, or social movement across boundaries. Do you generally think that larger tiers are better?

Councillor James Jamieson: The problem is that there is no perfect solution, and whatever you do is a compromise. I certainly recognise that taking the whole of Lincolnshire, for instance, into a single tier is rather difficult, given the sheer size of Lincolnshire and the massive differences in infection rates, travel-to-work areas and whatever. On the other hand, you would treat Manchester as a single area. In my own area you cannot treat central Bedfordshire differently from Bedford or Luton because of the amount of travel across those areas.

It will not be perfect, but we need a simple message, which will inevitably lead to some areas rightly being frustrated because they are put in a much higher tier than they naturally would be in, particularly in some of the larger county areas. I am aware that a number of people have raised this.

- Q238 **Lord Beith:** The second question, which both of you touched on, is whether it is desirable that a lot of what is now guidance be made into law. We have expressed concerns in some of our questions about the uncertainty about what is law and what is guidance in the public mind. But shifting a lot of guidance into law would be pretty difficult, because it would present great difficulties for the kind of drafting you would have to do, but it would also restrict what the Government could do.

There is no reason why the Government should not be able to say, "In addition to what the regulations say, we think you should be more careful about this or that, and we think you should wash your hands more often", or whatever. You cannot draft regulations on how you should blow your nose while wearing a mask. There is a role for guidance, is there not, which should be clear and distinct and does not need to be made into law?

The Chair: I will add to that question whether in fact it should be called guidance or advice. Maybe the word "guidance" causes an extra problem there.

Councillor James Jamieson: You are absolutely right. Guidance on how I wash my hands should not be law; it should be guidance. But the Government had as guidance things that they were expecting to be obeyed and to be enforced. They gave guidance that hospitality venues should keep the name and address of everyone who went there. That absolutely should have been mandatory. You are right, and there will be a judgment call, but if you expect people to do something, and you expect councils to enforce it, it has to be a law. If you are just advising

people that it is a good thing to do but you do not expect it to be enforced, it can remain as guidance.

Councillor Susan Hinchcliffe: Yes, when the police did not have the legislation to enforce things, the council officers were often left on their own and going around trying to enforce things through their normal powers. That was harder for them to do, because they do not wear a uniform or have the authority of the law. When the rules were strengthened, they could go hand in hand, with police and council officers working together at different venues, which worked a lot better.

Legislation and law give people very clear information about what is allowed and what is not. Guidance, by its nature, is more fluid. Advice sounds less firm than guidance and, I dare say, even less enforceable, and people would pay less attention to it. It is probably an area that you would have to ask a lawyer about, not me.

The Chair: Thank you for all that you have done there. That was very interesting.

Q239 **Baroness Fookes:** Is there anything other advice that our two witnesses would like to offer to the Government? Is there anything else the Government could do differently?

I would like to follow up a point that was made earlier. It was suggested that the chain of command from the Government to the local authority was a bit too long. I am interested to know how that might be short-circuited.

Councillor James Jamieson: I will let Susan come up with the chain-of-command answer, but I think the key to all this is to have close engagement between central and local government. We have demonstrated that we in local government can deliver faster, more nimbly and more flexibly, and that local government can deliver a better solution than a centralised design and control of public services, whether that is supporting the shielding, getting business grants out, or local tracing, which has been far more successful than national tracing.

Have that engagement, do it early, and trust local government to do a good job. If you give us the powers and the flexibility, we will deliver, but that requires early engagement and not just an announcement about a new guideline or a law coming out tomorrow. We can help to shape things to get over this pandemic more quickly.

Councillor Susan Hinchcliffe: I agree with all of that. There needs to be more listening between national and local government, and perhaps hearing from leaders directly. Our environmental health officers are out there on the ground daily. They have been working seven days a week trying to make things work. Let us make sure that that grass-roots information is fed through to national government so that they can quickly switch how they are operating. Local and national government need to work more closely to get the right solution for everybody. Let us

not be hung up on who comes up with the idea; let us just make sure it works.

Q240 **Lord Howell of Guildford:** I want to expand a little on the question Lord Howarth put earlier about powers, and on the remarks just now about the superior efficiency and effectiveness of local administration.

Do our witnesses feel that this Covid experience has raised any new questions about the actual powers within our constitution and the statute of responsibilities of local government? In the Republic of France, mayors have a special position and dignity that is quite different from what we have here. Switzerland, another confederation, has referenda all the time on very, very local issues, which of course it can now do instantaneously and electronically, thanks to the digital age we live in. Does this availability of constant consultation locally change views about what powers local authorities should have?

Councillor James Jamieson: This pandemic, terrible as it has been, has shown local government in a good light. It has shown that we can do things quickly. It has shown that we know our sector and our residents. It has also led to many things happening a lot faster than they would in normal times. We have seen much better co-operation across the public sector at a local level, and much better engagement.

These are good things. But the pandemic has also demonstrated how much more could be done if there was more devolution to local government. We would just make decisions more quickly and we would make them better, because we know our place. Quite frankly, the right solution for Bradford will not be the right solution for central Bedfordshire, Cornwall, Bolton, or anywhere else. Empowering local communities and local councils to do the right thing for their community in general is a good thing.

During this pandemic, whether it is the fact that we got the business grants out quickly, whether it is because we helped with the shielding, or whether it is local government tracing people that the central system cannot trace, half the reason why we have been so much better at these things is because we know our local area. We can get to those people. It has demonstrated the benefit of local government. I hope that national government pays heed to this, and that when the devolution White Paper comes along it genuinely improves the powers, responsibilities and resources of local government so that we can deliver better for our residents.

Councillor Susan Hinchcliffe: I agree completely. Devolution is so important when it comes to finance being devolved to local authorities to enable them to deliver differently depending on what works best for them. However, if you are talking about legislation, guidance, and a legal framework, there needs to be national legal framework so that there is some kind of parity and fairness between areas. It has been really challenging to enforce different rules in Bradford and Leeds, because those two cities are so close together. Therefore, residents naturally look

across the boundaries and ask, "Why is that the case? Why can they do that, and I can't, when we live 100 yards apart?" There is a difference between legislation, law, framework and guidance, and delivery, which should be completely devolved to local authorities and local combined authorities.

Q241 **Lord Howell of Guildford:** In this age of connectivity, everybody is in contact all the time instantly in a way that places power in the hands of local administrations, which really are in touch as they have never been before. Does this raise ideas, for instance, about more powers for parish councils, which are even more grass roots and closer still to what people are worried about: how playgrounds are organised, where the zebra crossing should go, and other things that are very important in people's lives locally?

I live in a borough where the authorities, with enthusiasm, put in a lot of massive cycle lanes, which had the effect of blocking the traffic but were not being used very much, and they have now had to undo them because they discovered it was not a good idea. With more consultation they might not have spent the money doing it.

I would like to hear just a little more, at the end of our session, about how this fantastic communications revolution and the way it puts everybody in touch with everybody can be used more effectively by local councils.

Councillor James Jamieson: I think it can be. One of the difficulties we have is that many people expect or think that the local authority has powers that it does not have. Planning is a classic example. Planning is so prescribed by national legislation that local authorities are quite limited. Similarly, as you well know, when putting a zebra crossing in there is a series of bits of legislation—rules and regulations—and everything else that has to be adhered to.

Absolutely, I think most of us would be very happy to see further devolution, but unless you empower a local authority it is very hard for it to empower a parish council, because that local authority will not necessarily have the ability because it is so constrained by legislation. It is a very desirable outcome, but the first step has to be to devolve local powers to local councils, which can then look at how those are best treated in their local area.

Councillor Susan Hinchcliffe: I believe in the power of subsidiarity. The right decisions need to be made at the right scale. Cycle infrastructure probably needs to be done across a combined authority area, because you cannot have a cycle lane going up to the boundary and then stopping. Yet there are decisions about local issues that parish councils could make. We need to devolve public decision-making right down to the smallest area.

I would be a bit cautious about the modern methods of social media and how to make decisions through them. A lot of the decisions I make as a

leader are complex decisions that require a balance of judgment from different actors, different agencies, advising me and telling me what the right solution is, and I have to come up with the right decisions. It is not a simple, "Yes or no, click this button". We need to be mindful of the complexity of decisions, and make sure that we have elected representatives to consider those difficult balances of choices. We need to stick with that, I would suggest.

Q242 The Chair: You have both talked about improvements in your relationship with central government during the pandemic. A few years ago, central government had an exercise on this kind of problem. Do you get any sense that local authorities were involved in or given proper consultation about what had happened then so that some of these problems could have been ironed out or prepared for, using local-authority expertise? Do you have any knowledge of what happened three or four years ago?

Councillor Susan Hinchcliffe: I know that something happened, but I was not personally involved. In retrospect, it would have been more useful for local authority leaders to be involved. A lot of things have happened in the last year. We keep talking about unprecedented times; this is unprecedented in our lifetime. I do not think that we could have foreseen everything. It is impossible. However, any Government and any leader need to have the humility to listen and to learn. Therefore, we need to do that as we go along. I hope the Government are now in a better position to listen and learn from the mistakes of the past, and make sure that in the future, the next year, which will also be challenging, connection between local and national government is better, and that they listen very much to what is happening on the ground before they come out with a headline that we all have to chase up and try to deliver.

Councillor James Jamieson: Yes, I was not involved in the thing that you are referring to either, so I cannot comment. I also recognise that nobody expected this, and nobody could have been perfectly prepared for it. The key thing is that we learn the right lessons from this and come out of this stronger. That is about listening. That is about being very open and not defensive, taking what you got right and building on it, and trying to eliminate for next time the things that you got wrong, because inevitably people will have got some things wrong.

The Chair: Thank you both very much. You have been very straightforward and efficient with your answers. We are on time, which is always helpful. We recognise the hard work that local government has done. Thank you very for your information today.