



Constitution Committee

Corrected oral evidence: Constitutional implications of Covid-19

Wednesday 16 December 2020

10.15 am

Watch the meeting

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

Evidence Session No. 19

Virtual Proceeding

Questions 256 - 269

Witnesses

I: Professor Aileen McHarg, Professor of Public Law and Human Rights, Durham University; Akash Paun, Devolution Lead, Institute for Government; Professor Daniel Wincott, Blackwell Professor of Law and Society, Cardiff University.

USE OF THE TRANSCRIPT

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

Examination of witnesses

Professor Aileen McHarg, Akash Paun and Professor Daniel Wincott.

Q256 **The Chair:** This is the House of Lords Select Committee on the Constitution. Today we are looking at the use and scrutiny of emergency powers during the pandemic and our witnesses are Professor Aileen McHarg, Akash Paun and Professor Daniel Wincott. Welcome to you all.

We will get into some of the detail of what has been happening, but you will be aware that this committee has made many comments about the workings of devolution and the intergovernmental arrangements in the past, so we have some background on the problems that we think have arisen in the past.

What is your overall position on how devolution has worked during the pandemic, and on what the main problems and issues might have been?

Akash Paun: Overall, we might say that devolution has had quite a crisis in a sense. Devolved institutions in Edinburgh, Cardiff and Belfast have proven themselves capable of rising to this unprecedented challenge. Obviously, it has been as difficult for the devolved Administrations as for the UK Government, but performance at the devolved level has not been demonstrably worse in how public services have coped or the spread of the virus in the devolved nations.

Indeed, polls from different companies of public opinion suggest that voters in Scotland and Wales at least seem to think that the devolved Governments have responded to and dealt with the crisis more effectively than the UK Government have. Overall, this has been something of a coming of age moment for devolved Governments in the UK, but one that the institutions have risen to the challenge of.

This period has really brought to light and raised awareness across the country of just how extensive the powers of the devolved bodies are. We found that a lot of people, particularly people in England, were surprised to find that the devolved nations were able to take their own decisions about lockdown restrictions and so on. When differences started to emerge, that seemed to come as a bit of a shock to people and, to some extent, the media.

The pandemic has helped to raise awareness of devolution, which is important, because there is still a tendency sometimes for the London-based media to confuse in their reporting whether particular laws and policy announcements are UK-wide or just apply in England, which obviously has a knock-on effect on public understanding of the law. So there has been that positive effect as well.

We will speak later about intergovernmental relations, but this period has demonstrated once again the interdependence between reserved and devolved functions. People still like to talk about a binary conceptual split between what is reserved and what is devolved. We are already seeing that in the context of Brexit but also in the context of dealing with the

pandemic. It has been clear that there is no such clear split, and we need effective systems of intergovernmental relations to help to co-ordinate across that boundary of what is a reserved and what is a devolved function.

Professor Aileen McHarg: As so often with territorial constitution, one probably has different perspectives, depending on where you are geographically in the UK. Akash said that this has raised awareness of devolution. I study devolution and I live in a devolved nation. For me and for people who live in devolved nations, it is no surprise that the devolved Governments have turned out to be so important.

Focusing on devolution to Scotland, Wales and Northern Ireland, the pandemic has simply highlighted quite a lot of things that we already knew about devolution. It has highlighted the fact that we know that internal borders matter and that the devolved institutions have extensive powers, and it has highlighted, as Akash said, the interdependence of devolved and reserved powers and the continuing financial inflexibility enjoyed by the devolved Governments. Although there has been obviously a strengthening of fiscal devolution in recent years, they still have limited flexibility and a lack of, or limited, borrowing powers has been a problem here.

The pandemic has also highlighted something that this committee, as well as many others, has pointed out: the weakness of our intergovernmental relations and structures. It has highlighted the dual-hatted nature of the UK Government as, at times, the Government of England but, at other times, as the Government of the whole of the UK, or sometimes as GB and sometimes as England and Wales—various combinations—and the problems that that causes. But it has also highlighted that co-operation is possible between the devolved and UK Governments if there is a common purpose and if it is undertaken in the spirit of mutual respect.

A little bit more interesting from my perspective are the implications of this for devolution in England. It has highlighted the importance of local knowledge and local consent where policies have differential local impacts. Of course, that has been extremely explicit in the later stages of the pandemic, but it is also a feature of government generally in policy-making. Policies have different geographical impacts that we often just do not see. It has also highlighted the weakness of so-called devolution in England compared with actual devolution in Scotland, Wales and Northern Ireland. I will be interested to see what long-term impact this has on the potential strengthening of or desire for strengthening devolution in England.

Professor Daniel Wincott: I agree with what has been said so far. I will try to sum it up by emphasising the paradoxical or contradictory impacts, consequences or interactions between the pandemic and devolution. When pandemic policy-making started to have to be made, relationships between the Government in London and the Government certainly in Scotland and Wales were already at a very low ebb. I was involved in discussions about Brexit that included Jeremy Miles, who is the Counsel

General in Wales, just as news of the pandemic was building up at the start of this year. It was pretty clear from those discussions that devolution was not in a good way, and intergovernmental relations in particular were not in a good way.

The degree of co-operation and co-ordination across the Governments has been remarkable—co-operation and co-ordination that often gets lost in the politicised debate about grandstanding or what various different Governments are trying to achieve. That is a very important point, but that co-operation has been almost entirely outwith the standard processes of devolution and indeed, as I think we will come on to discuss, outwith the standard emergency processes for the UK state.

We have not invented a whole new system, but this co-ordination has been achieved through the most urgent emergency structures like COBRA. However, it has been very uneven; it has come and gone. There have been long periods when—again, speaking from the perspective of someone working in Wales—politicians and officials in Wales have felt that they have not been able to communicate with the highest levels of government in London and that policy was being made in a way that was difficult to engage with from Wales and that was inconsistent across the territory of the UK.

Professor McHarg has already spoken about devolution in England. There is a sense beyond London and the south-east that the sometimes very generous interventions made by the Treasury have been driven by the needs of London and the south-east and not so much by other parts of England, certainly not by the needs of Wales or Scotland. The extension of furlough, for example, happened at a stage when in Wales decisions were already being made about further lockdowns but there was uncertainty about what the position would be with respect to furlough there.

Layered over that has been a level of political contention—I just have to come out and say that. There was political contention in Wales very early on, for example about a contract that it seems the Welsh Government had negotiated with Roche for testing kits in March that disappeared. There has been some discussion, some scrutiny, in Wales of that. Senior figures in Public Health Wales seem to have said that Wales was “gazumped” by a UK-wide strategy at that point, although the Welsh Government have refused freedom of information requests about what happened, on the grounds that giving free access to that information would be detrimental to their relationships with the UK Government.

We have had examples of that in statements by Members of Parliament, particularly in the border between England and Wales, and even by government Ministers: Matt Hancock said in WalesOnline, which is one of the major Welsh-oriented news items, that there was no such thing as the English health service or the Welsh health service; there was just one national health service. That was aimed at a Welsh audience, and while one can perhaps understand a sense of a shared spirit in the NHS, it seems to me that that intervention that might well have misled people in

Wales about the locus of responsibility for healthcare. It is not easy to understand a Secretary of State with responsibility for health putting that into the public domain in April at the height of a pandemic.

That level of political contention complicates the lack of an effective system of devolution across the UK as a whole, which I think has been revealed, notwithstanding high levels of effective co-operation in practice. It is an ad hoc approach rather than a systematic approach.

The Chair: Thank you. We will want to follow up on some of those points.

Q257 **Lord Dunlop:** Akash said that the reality of devolution came as a bit of a shock to the public and media in England. To what extent do our witnesses think it came as a bit of shock to some Whitehall departments that were less used to dealing with devolution? Akash again mentioned differences in public opinion as to how different Administrations have handled the pandemic. Why do you think that is? What are the factors that have led to differences in perception, given that the outcomes have been broadly similar?

Akash Paun: Thank you for the question. It has long been the case that some parts of Whitehall have been more practised and more experienced at co-operating with devolved Administrations than others. The devolved Governments have sometimes compiled an informal private league table of how easy Whitehall departments are to work with and how far they seem to understand devolution and take it into account in policy-making and so on. I find it hard to give a very comprehensive answer to this question, not being inside Whitehall. My impression is that certain departments have had to catch up from a lower starting point to meet the quite unprecedented challenges that have been faced this year.

Defra, for example, has widely been regarded for some time as being quite good at working in an effective and co-operative way with the devolved Administrations. It has had a long history of having had to be so, for example in co-ordinating policy on European Union decisions on agriculture, fisheries and so on. There is always a quite extensive machinery and culture of co-operation on issues such as the food supply.

Other departments, such as health and education, have been less used to working in that four-nation way and have had to step up their engagement. People from the devolved Governments could no doubt tell you whether that has worked well from their perspective. I understand that there have been very regular meetings of Ministers and officials, certainly between the Department of Health and its devolved counterparts, throughout the year, as you would expect, but those intergovernmental bodies have not taken on a formal status; there is no JMC for health or anything like that. But they have started to operate in a similar way. I know that the review of intergovernmental relations, which the Cabinet Office is leading on, is looking at how to put some of these more informal department-level intergovernmental relations systems on to a more formal footing.

Professor Aileen McHarg: I will say something briefly about the Whitehall department issue. We know that a consequence of the atrophy of the formal aspects of intergovernmental relations has been a fallback on bilateral relations between particular departments and the devolved Governments. That weakness is shown in these circumstances: there is no effective fallback when greater levels of co-ordination and co-operation are required.

It is also worth pointing out—I can only speak for Scotland here—is that the Scotland Office, which you might have expected to play a more prominent role, along with the other territorial departments, does not seem to have played a particularly significant role in the pandemic.

Lord Dunlop also asked what is driving different perceptions of success in handling the pandemic. Again, I can only speak for Scotland, where the figures have been really stark. The Scottish Government have had very high net positive ratings and the UK Government have had very bad net negative ratings. The Scottish Government's figures have fallen a little bit over time. They had fallen a little bit by November, and I know that yesterday's figures for Wales showed that they fell quite dramatically last month, so they may have fallen further in Scotland; we do not know yet. None the less, there is still a wide gap between the Scottish Government and the UK Government, particularly between Nicola Sturgeon and Boris Johnson—a gap that is even wider than the gap for their respective Governments.

The key issue in Scotland has been messaging. The First Minister has done daily press briefings throughout the pandemic. She has the tone right or she is perceived to have the tone right. She has been perceived to be transparent. She has been appropriately cautious and has given the impression of levelling with the public, not pretending that everything will be okay but levelling on the difficult trade-offs and choices that are to be made. That has compared favourably with the lack of consistency and less serious tone—perhaps that is a way of putting it—from the UK Government. But there have been the same sorts of issues in Scotland, certainly over care homes, the handling of examination results and so on. Overall, rates of infection and death rates are still extremely high.

It is that sense of transparency and consistency in messaging that has been key.

Professor Daniel Wincott: I think there has been something of a shock in parts of Whitehall. There has also been something of a shock for some elected members at Westminster. The aphorism "devolve and forget" has been repeated, often in the mood of "no more devolve and forget" or "the end of devolve and forget". To me, the aphorism captures the very poor development of any framework or mechanism for shared rule within the UK and an emphasis on devolving packages of power that could be handed over as a whole and then forgotten about. That has allowed many parts of Whitehall to go on governing the 85% of the UK that is England as if nothing very much had changed. That is hugely complicated by the fundamentally asymmetrical character of devolution, which has been

replicated within England so that each of the city-region mayors is based on an ad hoc, specific deal tailored to the particular city.

There is a real value in tailoring arrangements to the particular needs of specific places, but that needs to be weighed against having a system that works in the round and is understandable and legible in the round. My sense is that this is less a kind of falling back with the atrophy of intergovernmental relations mechanisms and more the default working of the UK as a set of governing arrangements. The emphasis tends to be first on asymmetry and on bilateral negotiations between the various parts with the centre. One of the interesting things, which we may come on to, is the extent to which one finds political leaders across England, and perhaps across Wales and Scotland, linking up and sharing a position. There is certainly some evidence of that with the English mayors at the moment.

On the popularity point, Professor McHarg quite rightly noted that there has been a drop off in the approval ratings of the First Minister of Wales, Mark Drakeford, recently. My strong sense is that to understand what has happened with Mark Drakeford's approval ratings one has to understand just how weak the distinctive Welsh media is. The public attitudes evidence suggests how little recognised he was at the beginning of the pandemic.

Carwyn Jones, his predecessor, had had some name recognition, and Rhodri Morgan who preceded him was a better known politician, but Mark Drakeford was not at all well known at the start of the pandemic. His approval shot up when he started doing regular televised briefings. I have heard Carwyn Jones tell an anecdote about distributing hot meals for the Senedd to pensioners in his constituency at the height of the pandemic. He talked about hearing Mark Drakeford's voice blaring out from televisions along a terrace. There was a cut through of the political standing of Mark Drakeford and more generally of an understanding of the significance of devolution. It simply had not happened before. That, combined with a calm almost grandfatherly tone that shared some of the features that Nicola Sturgeon had, contributed to his high approval.

It is not clear to me exactly why his approval has fallen now. It seems to be a difficult mix of being blamed for being too conservative or public health oriented. It seems to be linked, for example, to making hospitality venues close at 6 pm and not allowing them to serve alcohol, which is seen as undermining the viability of a hard-hit sector. On the other hand, it may also be connected to what are, very sadly, very high rates of infection in Wales and south Wales at the moment.

There is a salutary lesson here for any political leader that this virus is not easy to control and that there may be a connection, or there seems to be a connection, between pre-existing disadvantage, of which sadly there is a great deal in parts of Wales, south Wales valleys and west Wales in particular. Densely crowded populations and deprivation seem to be a difficult combination. He may be caught in the pincers of being too rigorous but not rigorous enough, if you see what I mean.

Q258 Lord Howarth of Newport: Turning to legislation that has been passed during the pandemic, the Coronavirus Act 2020 was passed into law very rapidly in response to the pandemic. Should we conclude that, because this Act was passed into law with the consent of the devolved legislatures, it has given the devolved Administrations the powers they need to deal with the pandemic? Our witnesses, particularly Professor Wincott, have already signalled to us that it would be a mistake to jump to a facile conclusion, but might it be supposed that this showed intergovernmental relations working effectively in an emergency?

Professor Daniel Wincott: Thank you very much for the question. My strong sense is that the Coronavirus Act and the consent given to it by the devolved legislatures reflects the spirit of co-operation that I think animated the working relationships between the legislatures, the Administrations, early on.

On the question of whether it gave the devolved Governments the powers they needed, I want to return to the point about the difference between shared rule and self-rule. It did give those devolved Governments some effective powers for self-rule, but it did not develop an effective overarching structure for shared rule, and perhaps could not have been expected to, given that these are not well developed within the system already.

One might have hoped that the co-ordination of Treasury decisions on the financial packages for the pandemic emergency and the particular policy decisions taken on health, education, travel restrictions and so on would have been nested within a pre-existing structure that worked more effectively. That was a limit that it would be almost impossible to imagine emergency legislation addressing. I think it is revealing that the choice was made to use new emergency powers rather than relying on the Civil Contingencies Act. It suggests that there is a tendency to deal with what is coming up in ad hoc kinds of ways rather than having a pre-existing structure that seems fit for the purpose of this pandemic.

Professor Aileen McHarg: The starting point would be to emphasise that the effect of the Coronavirus Act was different for each of the devolved nations, depending on the state of existing public health legislation and the differences in the underlying division of competencies. Generally speaking, it has given strong powers; the Scottish Government is most heavily reliant on the Coronavirus Act. There have been no vires challenges in Scotland, which tells us something. Cross-border travel is the only issue on which there has been a lack of clarity about whether the Scottish Government had the power to do things, although in the end there have been no challenges there, or not that I am aware of. It might have been helpful to have had a little more clarity on that particular issue.

Perhaps you might say that the Coronavirus Act gives too much power to the devolveds, and there are some provisions in the Act that I am not entirely sure were necessary. For instance, I do not think that the school closure powers have been relied upon. I am not sure how much use has

been made of the Schedule 21 powers on the detention of potentially infectious persons. It is difficult to disaggregate the Police Scotland data, but I know that in England the early charging under that provision turned out to be completely wrong, which suggested that it may not have been necessary.

Does this indicate effective intergovernmental relations? Yes, I think so. It was a genuinely collaborative effort. As far as I understand it, there was drafting input from each of the devolved Governments, although they were also working off existing draft clauses for a pandemic flu Bill, so this was not being done entirely from scratch. My understanding is that there was a conscious decision to set aside competence concerns in the spirit of reaching co-operation, so neither the devolved Governments nor the UK Government were being too precious about exactly what was reserved and what was devolved. The aim was to reach agreement and to do in a genuinely collaborative way.

Q259 **Lord Pannick:** Professor McHarg, I was very interested in your comment that there have been no legal challenges as to vires in Scotland. Why do you think that is, given that there have been a number of challenges in England?

Professor Aileen McHarg: It is an interesting question. There have not been no cases. There have been a few legal challenges, including one just last week, which was an attempt to challenge the decision to keep Edinburgh in the Scottish tier 3 rather than to reduce it to tier 2, but the basis of that challenge was Wednesbury unreasonableness and breach of legitimate expectations rather than vires per se.

In England, there has been lots of judicial review. In Scotland, there has been a relatively limited amount, partly because of a more cautious approach taken by the Scottish Government. The two Coronavirus (Scotland) Acts, for instance, have been preceded by equality impact assessments, children and young person impact assessments and so on. The Scottish Parliament is bound to comply with convention rights, so perhaps that sort of concern has led them to anticipate problems that in England have required judicial review.

There are broader cultural issues. There is that level of support for what the Scottish Government are doing. It is hard to say, but my impression is that there is higher compliance in Scotland and less pushback. That is not to say that there is no opposition. Of course there is, but there is less. Therefore, that might just be the explanation for why there is not the same desire to challenge.

Q260 **Lord Beith:** Could I continue this broader issue? I do not think there was any discussion in Parliament at the time of the Coronavirus Act of the conferring of a power to close the border without the consent of either the United Kingdom or England, the latter being rather difficult to achieve institutionally. It is now an offence for a resident of England to enter or remain in Scotland without a reasonable excuse. That sounds like the power of a sovereign state, which is not something we thought we were

conferring in the Coronavirus Act. One could make a strong argument for the power being available, but how does that leave the devolution settlement if the coronavirus legislation and its exercise has moved Scotland into a position more like that of an independent sovereign state?

Professor Aileen McHarg: I am not sure it is necessarily a feature of a sovereign state, because there have been internal border closures, for instance, in federal states in Australia and in Canada, albeit with similar question marks against their constitutionality. The legal basis for the internal travel restrictions is not necessarily the Coronavirus Act, or not the Coronavirus Act alone, because there are powers under the Public Health etc. (Scotland) Act 2008 that have been relied on for quarantining international travellers. There is a web of potential underpinning legal authority here, but it is not 100% clear. It would have been preferable to make it clear.

Akash Paun: A lot of the points I was going to make have been made by other witnesses. When we look back at the passage of the Coronavirus Act in the spring, we can see that it was drafted very quickly, obviously by necessity. However, as Professor McHarg has noted, it built on work that had been undertaken following Exercise Cygnus, the flu pandemic scenario exercise carried out a few years previously, so work had already been undertaken but had just not been brought forward in the form of legislation. That exercise had also involved the devolved Governments, so the start of a plan for how one might respond was already there and had to be adapted to the particular circumstances of coronavirus and turned into legislation at speed.

It was then, by all accounts, as the other witnesses have said, produced in a genuinely and very unusually collaborative four-nation way, with draftspersons in Whitehall working closely with, and indeed, I believe, under the instruction of officials at the devolved level, to produce something that, at least from the perspective of Ministers in the devolved Governments, provided them with the powers they needed. Then the very swift consent given under the Sewel convention ensured that there was no political controversy about that legislation. It was a very positive case of how, in a crisis and under pressure, politics could be put aside and the Governments could work together very effectively.

As to why it was decided to introduce new legislation rather than rely upon the Civil Contingencies Act or other emergency powers, I know that Michael Gove has been asked about that by PACAC or another parliamentary committee. He explained that there was a risk of legal challenge because the Civil Contingencies Act powers are obviously designed to be used in unforeseen circumstances, and there could have been argument that some of this was foreseen and the work had been undertaken for responding to a pandemic. To avoid any danger of legal challenges, or at least to reduce the likelihood of them, the decision was taken to pass new legislation.

The other big implication of passing the Coronavirus Act rather than using the Civil Contingencies Act powers was that this was a model that very

much respected and strengthened the role of the devolved Administrations. The Civil Contingencies Act powers are designed to be used by UK Ministers with some consultation with the devolved Governments but in a very much more central government-dominated way. The decision that was taken led to a much more pro-devolution outcome, you might say, and one that then facilitated, for a while at least, a collaborative response between the four Governments.

Q261 Lord Wallace of Tankerness: Akash Paun has just mentioned the Sewel convention, which is that the UK Parliament will not normally legislate in matters of devolved competence without legislative consent Motions being passed in respect of the devolved Parliaments and Assemblies. The pandemic constitutes circumstances that are not normal. Hypothetically, if any of the devolved legislatures had not consented to the Coronavirus Bill, would that have been an occasion where legislation might appropriately have passed without consent, although it is probably your view that far from being passed without consent it was passed with a degree of relief?

Akash Paun: Thanks for the question. The idea of “not normal” in the context of the Sewel convention has never been defined. It is not legally defined, but there has never been any attempt to define it politically either. It has been left there as a “We’ll know it when we see it” concept. That is the way the UK Government have understood that part of the Sewel convention as it is normally expressed.

The Institute for Government recently published a paper on the Sewel convention, as members of the committee may be aware. One of the things that we suggested should be considered is that the UK and devolved Governments try to identify a non-exhaustive set of circumstances that could reasonably be described as exceptional and not normal, and therefore circumstances in which legislation could be legitimately passed without consent.

In principle, yes, a pandemic of this scale could clearly be described as not normal. In this hypothetical scenario, where one or other of the devolved Governments or legislatures were unable or unwilling to act to deal with the crisis, in theory there might have been an argument that Westminster would have to step in in that circumstance. That is obviously not the situation we found ourselves in.

If it had been the circumstances we found ourselves in—if there had been no functioning devolved Administration in Belfast, for example, that might be the most likely scenario that one could imagine—presumably it would not have been the Coronavirus Act as passed that we would have seen introduced, because it would have been legislation to confer directly on UK Ministers the power to deal with the crisis in the devolved nations and take control essentially of devolved public services. It would have been a very different scenario. I think it is a very good thing that we did not find ourselves there.

Professor Aileen McHarg: It is an interesting question. I have argued in the past that “not normally” needs to be understood normatively and not descriptively. The fact that a situation is unusual for me is not, by itself, enough to override the Sewel convention. I have argued, though, that situations of necessity or situations in which a devolved Government are acting in an abuse of power provide a justification.

Both those arguments need to be unpacked a bit. The Scottish Parliament could have refused to consent to the Coronavirus Act because it preferred to bring forward its own legislation, for instance. I do not think that would be a reason for ignoring the Sewel convention. This is clearly something that it could have done. It might have taken slightly longer, but not much longer.

It is not obvious that there need to be absolutely identical legal provisions to deal with the pandemic in all four parts of the UK. In that circumstance, I would say no. On the other hand, if you have a devolved Government who are refusing to take action on something like this that has enormous implications for the health of its population, you are probably getting into abuse of power territory, so override would be justifiable.

In that circumstance, to pick up on what Akash said, we would probably not be talking about legislating to force powers on a reluctant devolved Government but rather legislating to allow the UK Government to act in its place. If a devolved Government simply think that there is no need to take action on the pandemic and we prioritise the economy over health, giving a set of highly permissive powers does not necessarily change anything. It does not make them do anything.

I want to take a contextual approach to the question of whether overriding Sewel is appropriate and, as I say, very firmly look for a justification rather than simply point to the fact that something is unusual.

Professor Daniel Wincott: I do not have a great deal to add to what has been said already on this particular point, except to say that we would have been in a more difficult place had this legislation not been passed in a spirit of co-operation at the time it was passed, despite the previous atmospherics and even some of the ongoing practical relationships over things like the procurement of tests not being in a good place at the same time or around the same time as this legislation was being passed.

Q262 **Baroness Foakes:** We have already discussed to some extent the Civil Contingencies Act and why it was not used. As a hypothesis, would it have made it more difficult for the devolved Administrations had it been used, given its UK ability to deal with the whole thing? Is there perhaps a case for reworking emergency legislation altogether, which would take account of devolved Administrations in the future?

Akash Paun: I have made the point already that the decision not to use the Civil Contingencies Act was a more favourable approach from the perspective of allowing the devolved Governments to deal with the crisis themselves within their territories, and I think that was the right one. I cannot profess to being a big expert on that piece of legislation, but my understanding is that it is designed for genuine out-of-the-blue emergencies, large-scale unrest and violence or invasion—moments like that, when there is really no alternative but for central government to throw everything at the problem without having the time to worry too much about process and so on. I do not think we were quite in that position with coronavirus, serious though it was, and the UK Government obviously took that decision in collaboration with the devolved Administrations in the spring.

On your question about whether there is a case for reworking emergency powers legislation, I am not sure. I will be very interested to hear what my colleagues say on that point. I reiterate that the approach taken this year has enabled the devolved Governments to rise to the challenge of dealing with this particular type of crisis. I am genuinely not sure whether other emergencies might throw up the need for a different kind of legislative framework.

Professor Daniel Wincott: I do not profess to having much expertise on the Civil Contingencies Act either. My general sense is that the approach that was taken was almost certainly more effective than relying on the Civil Contingencies Act, although I also note that the devolved Governments are not written out of the Civil Contingencies Act. Executive functions under Part 1 of the Act were transferred to Ministers in Wales in the summer of 2018, and were involved in the creation of a Wales-level resilience forum and four local or regional resilience fora in Wales, interestingly enough based on the four police services in Wales. Of course, policing is not a devolved function in Wales, so you see this blurring of devolved and reserved competencies in the administration of civil contingencies under the Act.

In that context, it is also worth noting parenthetically that despite the non-devolution of policing there has been sustained and effective work between the Welsh Government, Welsh officials and the four police services in Wales, including over questions about the policing of borders within Wales and between England and Wales. Although those are reserved powers, that pattern has been pretty effective in practice informally in Wales.

My suspicion is that scrutiny in Wales of executive powers taken by the Welsh Government by the Senedd, the Welsh Parliament and particularly by the Legislation, Justice and Constitution Committee has been rather more effective, although there has been a certain amount of back and forth between the Senedd and the Government at certain points about the pace of scrutiny of coronavirus regulation. I think it has been more effective than it likely would have been had the Civil Contingencies Act

been used, although again that is a counterfactual or a hypothetical, so it is difficult for me to evidence that in any substantial way.

Professor Aileen McHarg: Professor Wincott is right that emergency planning is executively devolved under Part 1 of the Civil Contingencies Act, but under Part 2 the emergency response is concentrated in the hands of the UK Government, subject to a duty to consult the devolved Governments that can be overridden in case of urgency.

It would have been completely unrealistic to expect the UK Government to take complete control. So much of the relevant responsibilities are devolved responsibilities. Not just health but education, social care, justice—the whole panoply of public services affected by Covid—are very heavily in devolved hands. It is not just a question of the legal authority lying at devolved level; that could be overridden. It is also the administrative capacity that lies at devolved level. I think the idea of cutting out the devolveds was a non-starter and I suspect that is the main reason why the Civil Contingencies Act was not used.

Whether we should have a reform of emergency powers to cater for devolution is a very interesting question. Emergency powers are a reserved matter under the Scotland Act at least, and, I think, under the other devolution statutes. I am not wholly clear what that means, but I think it means that Holyrood, for instance, could not pass an equivalent of the Civil Contingencies Act in devolved areas.

There might be advantages in having a set of emergency powers available to the devolved Governments as well as to the UK Government, for a number of reasons. One is that very few crises are suitable for that heavily centralised, top-down approach; in fact, the Civil Contingencies Act has never been used. It is appropriate to bring devolved Governments, and other tiers of government, into the decision-making process.

The advantages of having a pre-existing set of emergency powers are twofold. First, you tend to get better, more consistent arrangements for scrutiny and checks and balances. One of the criticisms of the use of the Coronavirus Act versus the Civil Contingencies Act has been the scrutiny provision; the constraints on power are weaker. A lot of it has been that ad hoc sunset provisions in the various regulations and so on are entirely voluntary. It would allow you to take a more consistent and probably stronger approach to scrutiny constraints at devolved and central government level.

The other advantage it would have is that it would allow you to build in a proper set of intergovernmental arrangements. We saw effective co-operation via COBRA in the early stages of the pandemic, but once COBRA ceased to meet the whole system fell away and there was nothing to replace it. Something that is on a statutory basis that requires formal consultation, co-ordination and agreement, where appropriate, you can cater for in emergency legislation.

Q263 **Lord Dunlop:** I want to follow up on what Professor McHarg was saying and move in more detail to the mechanics of intergovernmental relations.

All our witnesses have indicated that intergovernmental relations have been more effective during the crisis than they have been during normal times. To some degree, although not entirely, normal politics has been set aside. Presumably the previous joint exercises on how to handle pandemics would have helped with this.

Against that background, why do you think the regular COBRA and ministerial implementation groups ceased to operate from early June, and decision-making within the UK Government was done more traditional Cabinet subcommittees? What impact do you think this had on relations and on the greater divergence in approach that then emerged, or do you think differences would have emerged anyway?

Akash Paun: First, as you say in your question, we have seen a number of phases of intergovernmental relations in the intensity and nature of joint working and meetings and so on. We had that early period that we have been talking about when the Coronavirus Act was brought in, the coronavirus action plan was published, and the initial lockdowns and other changes around that time were jointly agreed and announced. Sitting behind those public-facing signs of joint working we had quite regular meetings of COBRA, and then the four ministerial implementation groups that were set up to co-ordinate activity in different policy areas. For the first period of the crisis, those operated on a much more intensive scale than anything we have seen before with intergovernmental relations.

Why did it then change? That is a question for the UK Government to some extent, because it was not a change that was taken jointly with the devolved Governments. The ministerial implementation groups were not wound up with the agreement of the Ministers elsewhere in the country. COBRA committees happen when the UK Government decide, and I know that the devolved Governments were not particularly happy that there was a change around that period.

What drove it? To some extent there was a sense by the early summer that the initial peak of the crisis had been overcome and we were on a path back to normality. Obviously that proved to be a little premature, but I think the UK Government were shifting their mindset from emergency response and crisis management to the path back to normality, to the reopening of society, the economy and so on, and their approach to engaging with the devolved Administrations changed accordingly. Then we moved into a phase when there was a very clear shift and we had separate exit strategies published by the four Governments and very little attempt to co-ordinate those, with different parts of the economy opening in different ways and different rules for meeting people indoors and outdoors that proliferated across the country over the coming months.

It is hard to identify the causal relationship, but it appears that there was a decision to shift back to each Government working in quite a separate

way. That led to some not particularly ideal differences emerging in the regulations that were not based on difference in evidence but simply reflected the weakening of the mechanisms for joint working.

Professor Aileen McHarg: I do not know the reasons why the system broke down either, but it seems to have come from the UK Government deciding that this was no longer the way they wanted to operate. The ending of COBRA meetings coincided with the UK Government making the first movement away from the co-ordinated four-Government approach with their shift from the "stay at home" message to the "stay alert" message, which caused big problems because it was not made clear that this applied to England only rather than to the other nations.

That seems to have ushered in a period of lack of co-ordination and differentiation, some of which may have been justified either because the conditions were different or because there are differing political judgments to be made about the proper balance between restrictions on movements and so on and opening up the economy.

The sense was that this was all happening in an ad hoc way. It contributed to public confusion, although, having said that, there were also lots of other things that have contributed to public confusion, and the whole process has just been inherently confusing. I certainly find it very confusing, given the speed of change and so on. It is definitely not ideal and hard to know why that came about.

Professor Daniel Wincott: I agree with what my colleagues as witnesses have said. It is hard to know exactly why the UK Government changed their position. I suspect, with Akash Paun, that this is about the importance of weighing up managing the pandemic with reopening the economy and the economic impacts. Those are particular responsibilities for the UK Government in the Treasury, so I suspect that weighed in the mix.

For me, it was more a defaulting to the standard ad hoc arrangements that attached to devolution than a choice to move to some new set of arrangements among the Governments, and I agree that the differences became confusing. I suspect they were particularly confusing in the devolved places where media messages come in a combination of UK Government, UK-wide and local messages. I also think that the media picked up on the confusion and amplified it by asking people whether they found the differences confusing. That is just what will happen.

On the question of whether the different approaches were justified, my own feeling is that they probably followed on from the forms of evidence that were available to the different Governments to some extent.

Those differ in a variety of ways. There was a lot emphasis on restricting movements within Wales through the summer, for example. That reflects patterns that would be well understood by officials and political leaders in Wales: that higher rates of infection tended to be found in the more heavily populated industrial south-east and north-east of Wales, which is

where the bulk of the population is concentrated, and that in remote, rural and coastal parts of the Wales, where the provision of health services is sparser and places are less crowded with people, prevalence rates of infection were much lower for most of the period.

However, there is a very strong pattern of weekend trips from south-east Wales to west Wales, for example, and without restrictions you would have had significant numbers of people, some of whom would have been unknowingly infected, moving around and potentially increasing burdens in more remote places. That is a dilemma that probably bulks larger in the minds of a Government sitting in Cardiff than it would in the mind of a Government sitting in Westminster and Whitehall.

Whether that is the right judgment or not I will leave to one side. It is important to recognise that there will be different evidence coming through, and quite naturally a Government in Edinburgh or Cardiff will listen to its own evidence and its own constituencies. In the absence of co-ordination, that will produce differences of approach, including the use of similar kinds of patterns on differences across England and the responses and reactions of increasingly visible political leaders like city region mayors and the tensions between that level and the UK level.

Q264 Lord Wallace of Tankerness: Some of the witnesses have already mentioned in passing that one of the possible or potential structural problems we have had is the financial dimension to this. Maybe it was important to carry on restrictions in one part of the United Kingdom and not in another for very good medical or health reasons, but that has consequences for things like the furlough scheme. It did not always appear that the Treasury was quick to pick up on that and make the necessary provision.

Equally, there were sometimes announcements by the Treasury of support for particular sectors, with consequential going to the devolved Administrations. Certainly, there have been claims in Scotland that it was not always passed on. At the end of the day, the devolved Governments are entitled to make decisions themselves, but it leads to some confusion and perhaps disappointment.

Looking at intergovernmental in circumstances like this, do you have a view on how some of the quite important financial dimensions to this could have been better addressed?

The Chair: Professor Wincott was nodding when you started. He may want to come in with solutions.

Professor Daniel Wincott: I was nodding, because I think it is a very important issue. I am afraid I do not have any kind of immediate or straightforward solutions. On financial and fiscal arrangements, the pattern of devolution was in flux before the pandemic, and some significant tax and fiscal powers have been or are being devolved in Scotland and Wales, but I do not think we have settled down into a new pattern yet. The historical block grant system, which has attracted a lot of contention and concern, has been the basis of devolution these past 20

years. It has proven to be a remarkably resilient system, but difficult to reform and problematic in ways that have been discussed over the years and for which I do not have any straightforward solutions, I am afraid.

Akash Paun: I have a couple of points to make on this issue. First, I agree with Professor Wincott. We have a funding system for devolution that feels semi-reformed. It has moved away from what we started with in 1999, but some core elements, including the role of Treasury as sole arbiter in the system, remain unchanged.

As for how the system has worked this year, you might say that the funding system rooted in the Barnett formula, the block grants and the allocation of resources to the devolved Governments as consequential of spending in England has to some extent got lucky in that the scale of the pandemic crisis has not diverged widely between the different nations.

Compared to some European countries, for instance, we have had a relatively similar scale of problem in the four nations. Had there been a much bigger health crisis in one of the devolved nations, we might have seen the provision of resources being based on spending in England as insufficient. I do not think that is what has happened. I think a guaranteed minimum of £13 billion has been given to the devolved Administrations this year to cope with Covid, which is separate from spending through the furlough scheme and UK Government-controlled spending. Overall, the amounts of money have been sufficient for the devolved nations to deal with the problems they have faced.

I think Professor McHarg made the point at the outset that because of the way the Barnett formula and funding system operates, the devolved Governments cannot take proactive decisions about spending until they know they will get additional resources flowing from decisions in England, so they are placed in a dependent and reactive position by the operation of the system. I know it has been a source of frustration to some extent at a devolved level when Treasury has sometimes made announcements without prior consultation, placing the devolved Governments in the position amidst a crisis of having to respond very quickly, under political pressure, and maybe feeling that they have had no choice but to replicate the decision taken in England. Some of the tax changes to the stamp duty and business rates fall into that category.

That has led to calls for a debate about whether the devolved Governments should have greater borrowing powers to be able to run a short-term deficit in times of difficulties such as these, or the ability to move money to a greater extent between years or between capital and resource budgets. Some of these questions have started to be debated and will no doubt be on the agenda when the fiscal framework for Scotland is reviewed next year, which is due after the elections.

Professor Aileen McHarg: I think it is pretty clear that there are two different kinds of issue here. One is territorial funding, which has been very well discussed so far. The other issue, and the main issue with the furlough scheme problem that arose, is not about territorial funding

directly but rather about a tendency to forget that just because the power is reserved does not mean that it does not a territorial dimension. This goes back to the question about how well Whitehall departments take account of the potentially divergent territorial impact of the decisions they make.

That goes to a problem I raised at the outset about the dual-hatted nature of the UK Government as both the UK Government and the English Government, and the failure, for understandable reasons to some extent, to properly separate those two roles. The decision to tie the availability of furlough payments to lockdowns in England simply should not have occurred. That was a UK-wide power that should have been taken on the basis of its implications in all UK nations, and should not have been used as a way of indirectly forcing the devolved Governments to fall into line with decisions being made in England.

Q265 Lord Howell of Guildford: I once worked as a junior official in the Treasury, and I can tell you that in those days no one thought for one second about devolving any economic or financial policy or power to the nations. On the contrary, a lot of thought went into how policy could be more centralised, but that is another day.

At the beginning of this session, Professor McHarg rightly and illuminatingly said that Covid had made us think much more about, and had shed light on, devolution. Obviously it has, and we would not be talking about it now if it had not, but for me what it has done is vastly increase the size of the vacuum and the confusion—the vacuum that Lord Dunlop was talking about—over the pattern of devolution and the underlying principles.

We are now talking not inter-administrative relations but intergovernmental relations, which implies relations between nations. That is the language of extreme federalism. Germany has separate Länder. It no longer calls them nations. They were once nations—Bavaria was a nation—but that is not the language they use in Germany. The Länder are not separate nations; the structure is inter-Länder and interprovincial, which is a quite different approach. There is an issue when one starts talking about nations, and about borders. Heaven knows, no one talks about borders between the German Länder. Maybe there are separate local parliaments and separate local rules, but borders are absolutely unthinkable in the Federal Republic of Germany.

I feel that our experts are perhaps not raising the tone, or understand the seriousness, of where we are going. We are drifting into a huge vacuum in the United Kingdom between the devolved nations and the centre in London. Separatism will obviously have a harder and faster ride. Should not experts on this whole area—as a result of Covid and of what was going on anyway, which of course is a huge centrifugal process driven by digital connectivity and so on—be looking at the issues of sovereignty, which Lord Beith mentioned earlier, as well as of defence, central taxation collection as opposed to bits on the margin, the monarchy and so on? These are the central issues that we are drifting

towards. Should we not be facing them? If we are talking about relations between nations, we want to talk about relations between the sovereignty of nations. What about that?

The Chair: Not that you did not want a big question, but before I ask you to answer that, we will be short of time soon so I will ask Lord Howarth to put his question as well so that you can wrap things up together, briefly I hope.

Q266 **Lord Howarth of Newport:** I would like to come back to a more particular question about the Barnett formula, which Akash Paun touched upon tantalisingly. Is it the view of any of our witnesses that the experience of the coronavirus pandemic might unlock the political opportunity for at long last reforming the Barnett formula and thus being able to move to a more rational and equitable distribution of resources across the United Kingdom?

The Chair: We are running short of time, so people can be brief, even though there are some big questions to answer. Professor McHarg.

Professor Aileen McHarg: I am not sure whether I should say thank you for coming to me first. I have not seen any suggestions of a desire to open up the Barnett formula. Obviously we know that reform proposals on intergovernmental relations are supposed to be coming out at some point, but we do not know yet what they might be. My concern, based on recent experience of the United Kingdom Internal Market Bill, is about how the processes of reforming fundamental aspects of the devolution settlement are conducted. I would be very concerned if these were to be conducted unilaterally rather than genuinely co-operatively.

On the previous question about intergovernmental relations, I am not sure that we should place too much significance on the terminology. Those are the terms that have been used throughout the devolution process in the UK. It is also the terminology that is used in Australia, for instance, to govern relations between the Australian Commonwealth Government and the state governments. I would prefer to focus on the substance of what goes on rather than on the terminology.

The broader question was about what keeps the union together. Lots of things keep the union together, and it is not just a focus on the big questions of defence and the monarchy and so on. Lots of things have an influence, including a sense of how we as the United Kingdom respond to major events in the life of the nation, the life of the country, such as the pandemic. It is quite hard to pin down what will support or undermine the union, but a lot of it is about messaging and tone—not viewing devolution as a nuisance, which has been very unhelpful, and not saying things like “There are no internal borders” when there clearly are. There are lots of things that we need to be careful about here when we talk about the implications of all this for the future of the UK.

Professor Daniel Wincott: My sense is that the pandemic, but also Brexit and, before that, the ongoing influences of the 2014 independence

referendum in Scotland, have raised fundamental questions about the future of the UK as a union. I suspect that these questions will become more intense over the next year or two, but I do not think they are particularly well in focus.

I differ a little from Professor McHarg in the sense that I think that some of the language we use is significant. Political leaders in Scotland and Wales and the institutions they lead are called the Scottish Government and the Welsh Government. In Whitehall, they are still routinely referred to as the devolved Administrations, or the DAs, which seems to me to be a difference of emphasis that might be taken as indicating a significantly lesser status, and which I think is sometimes unhelpful.

We have mentioned this throughout the session, but there is a very significant issue to do with the Government and the governance of England that makes the use of comparators difficult, because for many purposes the UK Government are the Government of England. They are also, for some purposes, the Government of England and of Wales.

This takes us back to the messy, asymmetrical nature of these arrangements. I am afraid, and your Lordships will be aware of this given the role that the Lords has played in the internal market Bill process. A good deal of the politics involved in all this, notwithstanding all the positive things we have said about the coronavirus responses, seems to be encapsulated, segmented, separate and different, certainly in the four constituent parts of the United Kingdom.

From the very beginning, I think, devolution has not asked the question, "What is the United Kingdom for in the light of devolution?" There are some fundamental questions that we are only just beginning to ask. I would prefer not to be addressing these questions from the position we are in at the moment, although clearly the kinds of stresses and strains we have experienced over the last couple of years perhaps focus our attention, maybe also including on the Barnett formula in the future.

Lord Howarth of Newport: It is the devolution paradox that we have heard about: that people simultaneously want to be separate, nationalist, localist and so on, but they also want strong central leadership. This is the paradox and it will be very difficult to turn it into an orderly, settled pattern.

Akash Paun: In response to Lord Howarth on the Barnett formula, does this year, this period, create an opportunity to move away from the Barnett formula? I would be relatively surprised to see that. The underlying problem is the same as it has been for decades every time people have talked about the reform of Barnett. Under the current allocation of resources, Scotland does relatively well out of Barnett in per capita terms, as does Northern Ireland, but in the case of Northern Ireland there is a clearer needs-based justification that one can point to. In the case of Scotland, it is hard to justify by reference to objective needs or the cost of providing services; the scale of higher public expenditure in Scotland than in England.

Politically, however, it would be very difficult to move away from it because of the challenge from Scottish nationalism at the moment. Also, if you look at the numbers, if you were to or wanted to equalise public expenditure between Scotland and England, for example, the negative impact on Scotland would be substantial. I believe that the difference in spending is about £2,500 per person. It would be felt. If, however, you were then to spread that money across England, the extra spending per person would be relatively small because of the difference in the size of the population. Politically, if you wanted to fully replace it, there would be a huge price to pay with the backlash from Scotland, and the political benefits you would gain from England would be relatively small. To a large extent it comes down to that political difficulty.

Changes in the way the system operates might be considered. The Scottish fiscal framework is due to be reviewed and will look at tax powers and borrowing powers, and so on, at some point next year I believe, but it is very hard to reform. When it comes down to it, it is a zero-sum game.

We could obviously spend the whole hour and a half discussing the other question, so it is probably better to leave that for another day.

Q267 **Baroness Corston:** Are there any instructive examples from other countries as to the management of the virus, as between national and regional or state legislatures and Executives?

Akash Paun: Thank you for the question. From relatively limited canvassing and research on this subject prior to this session, what is clear is that in many federal and multilevel devolved countries, intergovernmental working has been intensified to co-ordinate the response to Covid between different levels of government. In many cases, there is much more of an established and formal institutional machinery on which to build.

Australia is quite an interesting case. Building on existing mechanisms, Australia has created something called the National Cabinet, which has met frequently throughout the year, chaired by the Prime Minister but bringing together the leaders of the states and territories. From what I have seen, that has led to a much more closely co-ordinated national strategy for dealing with Covid while also allowing for differentiation in how some of the rules have been implemented within the nation. That is an interesting case.

In Germany, there has also been quite strong co-ordination, with regular meetings between Chancellor Merkel and state premiers and joint announcements of big national changes to lockdown regulations, but again respecting the devolved, or subnational, powers, and therefore encompassing variation to some extent.

The Chair: Building on pre-existing mechanisms?

Akash Paun: Yes, very much so, in both those cases.

Professor Aileen McHarg: I was going to mention the Australian example. It has been regarded as so successful that it is replacing the pre-existing mechanisms for intergovernmental relations. What appears to be important about it is its formality, the regularity with which it meets, and the high level at which intergovernmental contact is being maintained.

As Akash said, this problem has been faced in many countries and it does not really depend on the formal structure of the country and whether it is unitary, federal, quasi-federal, or whatever. It just seems to be a feature of many countries that the administrative capacity and functions that are important for this particular pandemic tend to rest at a relatively local level. A history of co-operation gives you something to build on. That has not happened by any means in every state. There are places where it has not happened very successfully, where there is dissatisfaction with the level of intergovernmental co-operation.

Professor Daniel Wincott: I agree with the focus on Australia as an interesting example. However, I would underscore the basic difference between multilevel systems, where one level of government governs the state as a whole and every part of the state as a whole has its own government, and the UK system where the UK Government are also the Government of England. That makes drawing lessons from other places very difficult.

I also very much agree with Professor McHarg's point about localities and understanding, and reading the situation in a detailed way in particular places and being able to draw that expertise up to the higher levels that deal with strategy.

Q268 **Baroness Drake:** I want to look to the future and the continuing influence of the pandemic experience with two questions. How are public perceptions of devolution being impacted by the pandemic? I know we have touched on this in reply to other questions, but perhaps you could focus on the key influencing impacts. Secondly, what might the pandemic experience mean for the future of the union? I know that is speculative, but what does it indicate to you?

Professor Aileen McHarg: The shaping of public perceptions will almost certainly be different depending on where you are within the United Kingdom. In Scotland, it appears that Covid is driving increased public support for independence, along with Brexit, which has obviously been pushing figures up recently.

There are two elements to it. I mentioned earlier the vastly differing assessments of the competence of the UK and Scottish Governments in handling the pandemic. Whether that will be maintained is an interesting question. If satisfaction ratings with the Scottish Government begin to fall, it might well feed back into levels of support for independence.

The other issue, which I have also touched on and which was particularly the case in the early stages of the pandemic around April or May, has

been the expressions of frustration with devolution being made at UK level, suggestions that devolved Governments were pursuing difference for its own sake or were trying to pre-empt the Prime Minister's announcements, and, more recently, the Prime Minister's reported remarks that devolution has been a disaster. None of that is helping at all. I think it will also be feeding into support for independence. In Scotland, it seems to be reinforcing the underlying trend of increased support for independence, but I am not sure whether that will be maintained.

The effect in England, as I said earlier, will be more interesting. I would be interested to see evidence on the impact it has had on support for greater devolution in England and, again, whether that is maintained over the longer term. In England, it is about emphasising the importance of locality, the importance of subsidiarity, and all those kinds of things, which are in tension with a centralising instinct in some parts of the UK Government.

The Chair: And the Welsh dimension, Professor Wincott?

Professor Daniel Wincott: The major impact in Wales has been a dramatic increase in awareness of devolution, which at least initially seems to have been associated with an increase in the popularity of the current Government, an increase that moved in the opposite direction. With the Prime Minister, there was a brief so-called rally round the flag moment when his popularity increased early on and then fell away.

Political support for independence in Wales is much lower and much more recent as a significant topic of discussion than it is in Scotland, but I think we can see a significant move. People are increasingly talking about the indy-curious in Wales. To some extent, and this partly picks up on Lord Howell's point about the so-called devolution paradox, this relates to how different people identify and the mix of British identity and Welsh, English or Scottish identity in Great Britain. It seems that people who have a Welsh identity, perhaps unsurprisingly, are more likely to support independence.

Things are changing, although I do not think they have changed as much as they have already changed or are as different as they are in Scotland. I was involved in some deliberative work in Scotland over the summer focusing on people who supported the leave side in Scotland and in the Brexit referendum, and it was striking that even among that group, who you might expect to be relatively sympathetic to the UK Prime Minister, there were people who found him extremely difficult to support and felt that they were in a quandary. They had quite a lot of respect for the way the First Minister, Nicola Sturgeon, had been handling the pandemic but could not bring themselves to support her politically for other reasons. They felt they had nowhere to turn politically within the Scottish party system.

As I have already said, I think we are in a very challenging time for territorial politics across the United Kingdom. My own sense is that,

whatever constitutional arrangements we end up with, it is quite important for at least some of our discussions to try to find ways of focusing on enhancing relationships and getting to that deeper level so that people across the UK can live their best possible lives without unnecessary restrictions, whether that is through Scotland being independent or through some kind of strengthening of the union.

Akash Paun: I think that, in England, the pandemic, this period, has demonstrated to some extent the value of having a strong voice for cities and regions. The metro mayors, including Andy Burnham in Greater Manchester and the Mayor of London of course, are the spokespersons for cities and regions, and having those kinds of individuals, who have a platform and are able to speak up for their city or region and engage with central government over funding and so on, has shown its value, even though their powers are relatively weak, certainly in comparison with those of the devolved nations.

I do not know whether that has fed through into higher support for further devolution in England, as reflected in opinion polls and so on. It is an interesting question, but that is my take on it. We await the Government's long-delayed White Paper on English devolution. That supposedly will make good on a promise to extend devolution across England and to deepen the devolution deals that already exist. That is a process that should continue.

As for the union, Professor McHarg talked about the clear rise in support for independence that we have seen this year. It is, of course, in part about Brexit, but it certainly seems to be in part about the perceived stronger performance of the devolved Administrations in dealing with Covid. It is impossible to say whether that feeds through to a permanent shift towards majority support for independence. If and when we get into the details of an independence debate, if a referendum does appear likely to happen I think the case for independence will run into more difficult territory than it currently finds itself in, and arguments about the currency, what will happen on the Anglo-Scottish border and the underlying fiscal position will come to the fore.

At the moment, it is quite easy for the Scottish Government to make the case that we are being dragged out of the EU against our will and that we should look at the mess the UK Government are making over coronavirus, but the support for independence may not be quite as solid in the long term as it currently looks.

Q269 **Baroness Drake:** Professor Wincott, you referred to the importance of enhancing territorial relationships going forward. This is a short-notice question, but what do you consider to be the biggest barrier to building a machinery sufficiently resilient to handle shared decision-making effectively?

Professor Daniel Wincott: Goodness, that is quite a question. My sense is that it is related to the dispositions in the UK Government, in Westminster and Whitehall, to the question of the UK Government also

being the Government of England. It picks up on the aphorism I mentioned a long time ago of devolve and forget: the sense that different parcels of power are sent out to different parts of the UK and now also to the metro mayors in England, and account is not really taken of what that means for the powers that are left at the centre for the UK as a whole and then for England.

I have at the back of my mind the Belfast/Good Friday agreement or the British-Irish Council, which talk about the totality of the relationships among all the peoples of these islands, which seems to me to be quite a good formulation of the underlying point, although I note that that includes, of course, the Republic of Ireland. I also note that UK Prime Ministers and senior government Ministers have tended not to attend that council, although their counterparts from the Republic have attended them routinely. That speaks to this sense of devolve and forget.

I acknowledge that this a challenging issue, because of course the UK Government are the Government of England, which is 85% of the population of the UK, so they certainly have a lot to be going on with and a lot to attend to. It is a very difficult balance to strike in such an asymmetrical union in its economic and population make-up.

The Chair: Thank you very much, all three of you, for your time this morning. I think you will have realised that it is a very interesting area that we are discussing and quite a challenging one looking forward. We are grateful to you all for giving your evidence. Thank you.