



Constitution Committee

Uncorrected oral evidence: Constitutional implications of Covid-19

13 January 2020

9.45 am

Watch the meeting

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

Evidence Session No. 20

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Questions 270 - 289

Witnesses

I: Lord True, Minister of State at the Cabinet Office; Lord Bethell, Parliamentary Under-Secretary, Department of Health and Social Care.

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Examination of witnesses

Lord True and Lord Bethell.

Q270 **The Chair:** This is the House of Lords Select Committee on the Constitution. We are looking at the use and scrutiny of emergency powers during the pandemic. Our witnesses this morning are Lord True and Lord Bethell. Good morning to you.

First, thank you for your written evidence, Lord True. I think it shows that a month is a very long time in a pandemic, and clearly there have been challenges for the Government and Ministers in getting legislation that was needed.

In general terms, before we get on to the details, could you outline what you see as the challenges you have been facing and how you have actually tackled these?

Lord True: They fall into two sections, which I rather anticipate the Committee will examine. The first, as you say, is the broad constitutional background: how we ensure, and whether we have ensured adequately, parliamentary and indeed public scrutiny of the use of these very considerable powers; and the constitutional aspect, which also relates to the very important ongoing relationship with devolved Administrations and local authorities.

The other aspect, which Lord Bethell is concerned with day to day, is the fast, responsive handling—moving quickly to deal with a virus that presents constant and changing challenges. Really there are two strands, and we have been trying to learn in both.

I am not involved in the Covid committees or Covid decision-making, so to that extent if I cannot answer fully all the questions the committee asks, obviously I will ensure that there is further follow-up information.

Keeping abreast of those two strands has been the main challenge and is a continuing challenge, as we have seen with the recent new variant of the virus. I do not know if Lord Bethell wishes to add anything.

Lord Bethell: You have put it very well, Lord True. From an operational side of things, one of the most important things has been to try to sustain a sense of consensus around our approach. That consensus is partly political consensus and partly popular consensus. Having scrutiny and challenge in Parliament but also trying to take everyone with us at the same time has been our main focus. Therefore, it is worth thinking about how the systems we have in place have either encouraged or mitigated against that.

The Chair: We will come on to some of those details. Let us start with Baroness Corston taking this back a little to some of the legislation.

Q271 **Baroness Corston:** Thank you. What were the reasons for not using the powers in the Civil Contingencies Act 2004 at the start of this pandemic?

Lord Bethell: We looked very carefully at that at the very, very beginning. In fact, that was the preferred route, because it is such a useful and thoughtful approach to emergency legislation. However, the advice we had from lawyers was absolutely categoric from the very beginning. There is a very clear triple-lock built into the CCA, as noble Lords will know, which requires that an emergency has occurred, the provisions sought are necessary and urgent, and the legislation is appropriate and proportionate.

The problem we had was that we had known about the pandemic since the beginning of the year. Once the cruise ships had arrived we had a very strong hint of the way in which it was going to play out around the globe. Therefore, we faced severe risk of the launch of legal action and successful legal action if we went down that route, so we had no option but to go down the conventional statute route. That had the benefit of having our response to Covid discussed in Parliament quite extensively at the very beginning, and it set up a broad cross-party consensus on the response which I found very helpful in the months to come.

Lord True: To add to the point Lord Bethell makes, it was very much in the mind to ensure that there would be parliamentary scrutiny. As noble Lords will recall, things moved extremely quickly, so that in the event, with the consent and agreement of the Opposition and indeed more broadly in the usual channels, we ended up not having a full discussion and examination of the Coronavirus Act. It went through very swiftly, to a degree that perhaps had not been anticipated even only a few days earlier.

Q272 **Baroness Corston:** As an alternative to fast-tracking the Coronavirus Act 2020 through both Houses in just four sitting days, did the Government consider introducing short-term regulations under the Civil Contingencies Act 2004 and then allowing Parliament more time to consider primary legislation designed to address the coronavirus pandemic?

Lord Bethell: We considered a number of options, but, as Lord True rightly pointed out, it was considered possible to have a long and extensive debate on the Coronavirus Act when we started that process. In fact, there was an enormous amount of bilateral discussion between the parties in the crafting of the Bill originally, so there was a lot of engagement on it.

However, ultimately, things moved very quickly and very suddenly, as noble Lords will remember, and a process that was moving at conventional speed suddenly had to be moved much more quickly. It was not our strategy to rush the Bill through Parliament; it was a requirement of the situation.

The Chair: When you said you could not use the Civil Contingencies Act because we had known that the pandemic might have been coming, did that situation not change when the World Health Organization actually deemed it to be a pandemic? Would that not have given the cover?

Lord Bethell: That was not the opinion of the legal advice that we were provided with. My understanding, and I should add that I am not a lawyer, is that the CCA triple-lock provisions are drafted in such a way that they are very restrictive. They are not broad—this might be one thing for the Committee to consider—and they tied our hands emphatically.

We had no prejudice against using the CCA. In fact, as Lord True pointed out, there were a lot of good reasons, including the parliamentary scrutiny elements of the CCA, which meant that would have been a good route to use. It is just that the way it is drafted meant that we could not have done it without severe risk of legal challenge, which is why we went down the route we did.

The Chair: We might come back to that when we start looking at the future.

Q273 **Lord Faulks:** Good morning to both of you. I want to ask you about the lockdown provisions. The public health Act of 1984 was not clearly the right vehicle for this, as a number of witnesses have told us. As you will know, there has been quite a lot of controversy, not least from the former Supreme Court Judge, Lord Sumption, about the appropriateness of what have been described loosely as “lockdown provisions”.

Why was such a power not included in the 2020 Coronavirus Act? That would have provided greater legal certainty and would have given Parliament the opportunity, although restricted as we know, to scrutinise this pretty controversial power?

Lord Bethell: There are two answers to that. I know that Lord Sumption has his scepticism, but the provisions in Part 2A of the Act were amended following the global SARS outbreak in 2008 precisely for this reason. While he might be sceptical, it is the reason why the amendments were put in place. They may not be perfect, but they are a legal route designed for this purpose.

When we drafted the Coronavirus Act we were trying to fill in only the really egregious gaps and provisions that really did need to be legislated on. We took the minimalist approach, which was part of the agreement through the usual channels and other parties, that if in doubt we would sunset, limit, toggle or omit something that would not be needed. At the stage when we were drafting the Bill, which was before the big Italian outbreaks, we were not focused on lockdowns being an immediate requirement anyway, and when they did come up in conversation lawyers quite reasonably pointed to the 1984 Act as having provisions which we could use if needed. Those are the reasons why they were omitted.

Lord Faulks: You talk about a minimalist approach, and I understand that. However, when you are talking about a pandemic, surely it was foreseeable that you might have to lock down or have other some pretty drastic restriction on civil liberties. Was it satisfactory to rely on a 1984 public health Act, which was not really expected to perform this, given that the critics of the Government can say, “There wasn’t the scrutiny we

would've expected when the 2020 Coronavirus Act was going through, and here we are taking people's liberty away by virtue of an Act that, on the face of it, was not designed to do that"?

Lord Bethell: When we were drafting the Bill, there was not the prescience of the kind of lockdown regime that we are currently living through. That was not where people's heads were at. If things were going to come to that, I think there was a feeling that we would have the opportunity to bring any legislation if necessary.

I have to disagree with you. I think you are making the assumption that the 1984 Act and the amendments to it are wholly inadequate. That was not the view that we took. We took the view that these provisions were specifically in place to be used, and that is the route that we could use. Therefore, there is bit of a legal difference of opinion there.

There was a list of things that we could have put into the Coronavirus Act, and we leant away from things that we did not know that we were going to need to use. Another example of that is rationing. Rationing came up as an example of something that we may need to use, which is a horrific thing to be talking about on a public call like this. It has not been; the supply chain for food has been incredibly robust and the supermarkets are fine. But at the time there was a lot of discussion about whether we needed to put in legal provisions for that. Instead, we leant against it, because we did not know for sure that we would need it, and that was the rough rule of thumb we applied.

Lord True: Another example is a part of the Act that I would have had to take through the Lords if it had not been agreed that it would be accelerated. At the time, there were higher-end forecasts of extraordinarily large numbers of deaths, up to half a million in one of the best-known forecasts. So powers were taken in the Bill potentially to handle the accumulation of deceased people, to put it in the most polite language. As it has proved, that challenge has not, at least as yet, had to be addressed.

One has to remember the original remarks I made about the fast-moving and changing nature of the crisis. That, to some degree, is probably reflected in what might be seen as some of the exaggerations, imperfections, lacunae—whichever way you want to look at it—about the legislation.

Lord Faulks: Thank you very much indeed.

Q274 **Baroness Fookes:** I want to look at the emergency statutory instruments, of which there has been a positive blizzard. What steps did the Government take in deciding whether it was necessary? As a secondary point, how important was it for the Government to allow Parliament a chance to approve them before they came into force, bearing in mind there has been a lot of criticism that that did not happen?

Lord Bethell: If I may, I will say just a few words on the operational reality of it, and then maybe turn to noble Lord True to comment on the legal aspects of it.

The operational reality is that we frequently found ourselves making decisions at very short notice. Our absolute intention in the best possible circumstances would be to bring statutory instruments in advance to the House for debate before they are applied, which has to be the correct parliamentary principle. We made the commitment, I think in November, to bring any nationwide statutory instrument to the House in advance of its application.

However, in May and June, when we were bringing in the local lockdowns, there was indeed a blizzard of those *Sis*, and a lot of them had to be brought in at short notice. Many of them were in response to feedback and parliamentary comments about local lockdowns themselves—about their geographic distribution, about the precise measures applied to people—and many of them were refinements to try to optimise the effectiveness of local lockdowns and to minimise the impact on people. We were trying our hardest to take people with us and to have the smallest possible impact and the greatest possible effect.

It was unfortunate that there was not always space in the parliamentary schedule to put them in the parliamentary programme as quickly as possible, so some of them fell over the summer break and landed in the autumn. That is something I regret. It was not particularly in my gift, but I recognise that this was an example of where the parliamentary system might not have performed to its best.

Lord True: Following on from that, obviously this is a matter ultimately for the business managers in both Houses as well as for the Government. The Government's duty is to be accountable to Parliament as Parliament requires, and indeed in my judgment go the extra mile beyond that to make itself accountable.

In the circumstances, exactly as Lord Bethell describes—fast moving and sometimes changing, with new insights, new learning and responses—a necessity to act quickly has meant that some regulations have had to be laid during recess, which is never ideal. I saw that was commented on in your evidence session with Lady Hale and Lord Sumption. However, Parliament is not in session continuously, of course, so that has happened. It has also happened that made affirmative has been used rather more than—to put it politely—would be the ideal. None of those decisions were taken lightly, and technically there have been opportunities for Parliament to comment and debate all the regulations that have been laid.

Baroness Fookes: There have been occasions, have there not, when before Parliament has had a chance to debate them they are actually out of date, which does not look good.

Lord Bethell: I completely agree. I do not really want to reel them off, but I am painfully aware of some of the more difficult events. Some have been laid at very short notice, some have been enforceable literally minutes after they have been published, some of them have been out of date before they have even been debated, some have had amendments and amendments and then the amendments are out of date before they are debated. It has become a very complex and overlapping series of regulations.

I would like to reassure noble Lords that one of the reasons why that has happened is because we have tried to bring into Parliament as much of the regulations as we can. We have worked within the parliamentary process and we have used the laws that are at our disposal. There has not been the opportunity to create new laws for handling this pandemic, so we have done our best with what we have, which includes the practice of Parliament to go into recess.

I point out that on 30 December we specifically debated the latest regulations on a one-off day in Parliament. We have tried to bring regulations to Parliament wherever we can. We have done briefings with parliamentarians as much as has been invited, and we have tried to put the experts and the officials who are behind many of these regulations in front of parliamentarians. We have done a huge amount of briefing and liaison with local authorities and tried to bring local democracy into play as much as we can.

We have sought to do the best with what we have, but I do not hide from the noble Lords that there have been, I think, more than 180 regulations and 60 debates. I have done 60 Dispatch Box appearances to cover these regulations alone. I have made more than 200 Dispatch Box appearances since February to cover all the different coronavirus debates. There has not been any shortage of parliamentary time spent on these matters, but I recognise that there is probably a helpful conversation to be had about how effectively that time has been used.

Lord True: I should add that although the good old House of Lords, of course, is working hard all the time—as all of us on this call know—there was also a specific recall of the House of Commons in order to address the latest round of regulations.

Q275 **Lord Sherbourne of Didsbury:** A very short question. I sit on the secondary legislation committee, so these regulations come to us. I am very sympathetic to the Government's dilemma, which is that they have to pass these regulations to come into effect immediately when we have a crisis of the kind we now have. So I completely understand why the Government have had to do so many made affirmatives. There are very good public health reasons for that and Ministers have explained the reasons why they have done this.

Looking ahead, is there any way in future of dealing with this dilemma between the need for parliamentary scrutiny but at the same time the need for Government to act very, very fast and for measures to come in

at speed?

Lord True: That is an exceptionally difficulty constitutional question. I am in a difficult position here, because I sit as a Minister of the Crown and I am a very committed parliamentarian. I do not think there is any conflict there, and from the outset Ministers wish to be accountable.

I think it was sad that, for example, some of the SIs were debated before the JCSI reported on them. That is not the normal practice of the House. Speaking personally, I cannot commit the business managers in either House going forward. I am sure that we should all wisely remember as we go forward that as well as learning the lessons from all this—your Committee’s deliberations will be a great part of that—we have to guard against anyone coming forward in three or four years’ time and saying, “Well, in 2020, 74 or 84 made affirmatives went through, and that should be a precedent”. As part of the review, within government, within the authorities of the two Houses, and outside, clearly we need to try to get back towards the constitutional norm, which I think we would all like to see. However, these have been exceptional circumstances.

In defence also of the business managers, there has also been exceptional activity in the great welter of statutory instruments that have been required in the transition period for coming out of the European Union. There has been a double overload on parliamentary scrutiny that one hopes will not recur in the future.

Believe me, as Ministers and parliamentarians we take very seriously the questions your committee is putting, and I look forward very much to seeing whatever recommendations you may come up with. I will say only that we should not establish this as a precedent for the future.

The Chair: I think we can all agree with that last remark.

Lord Bethell: I want to double up on Lord True’s tribute. I am very conscious of the considerable contribution of the Joint Committee, because when we have had the unfortunate experience of having to amend our SIs it has almost always been because the JCSI has not had the opportunity to mark our homework. Its comments have been extremely valuable and have contributed a lot to the effectiveness of those SIs, and I will be very open to ideas of how the JCSI’s role could be enhanced.

Q276 **Lord Howarth of Newport:** Good morning. Lord Bethell, you have been very open with us about the problems the Government found they had when they were looking at the legislation already on the statute book and the powers they might need to address the pandemic. You have said that the Civil Contingencies Act provisions were very restrictive, and you spoke of egregious gaps. There seems to have been a kind of legislative improvisation to produce a patchwork of powers building on some that were already there and adding more.

No doubt the Government, like Parliament, will want to learn the lessons from this. What plans do the Government have to review, reform and

consolidate emergency powers? What principles do you believe will need to be satisfied, and how is the role of Parliament to be assured so that informed consent can be obtained and maintained?

Lord Bethell: Thank you very much. The noble Lord described it as a legislative improvisation and patchwork. That is the nature of British law. I would not regard it as a negative categorisation. It is how we have to deal with things without a written constitution or a form of constitution per se.

So I am not completely surprised or taken aback by the way in which we had to do things. In fact, I am rather proud of the British way of doing things and the fact that we were able to improvise at short notice. I contrast that with some of the difficulties some of my colleagues had in other countries where they had more formal restraints and had to escalate matters to use very extreme emergency powers, and to suspend democracy all together in some cases. When I am on round tables with other countries, my blood slightly curdles sometimes when I understand the kind of extreme measures that they have had to take in order to have a basic pandemic response. I am actually very proud of the British response and the flexibility we have in law to be able to do these things.

I am afraid I have to disappoint noble Lords and say that we are only half way through the pandemic. I am absolutely absorbed in managing the response, doing the vaccine rollout and getting everything sorted out, so my thoughts have not turned to a review yet. As Lord True said, a review will happen in time, but I am afraid that is not something I have given thought to at this stage.

Lord True: If I may say so, I think your deliberations on the matters of the broader constitutional aspects, which Lord Howarth has referred to, are extremely germane and important. The interrelationship between the CCA and other legislation is obviously an interesting area for examination. A number of statutes—animal-health related legislation, for example—provide quite wide and sweeping powers to government, and there is a tension between a kind of catch-all provision, which potentially has really enormous powers, and trying to find the right way to deal with more spectrum issues such as animal health.

It might be interesting—I do not know; I am talking off the top of my head here—to remember when the CCA was reformed in 2004. At that time, there was quite a lot of concern in your Lordships' House about whether the Government were taking on too many powers and all the debates that were taking place about detention without trial, so called. Perhaps in the climate of the times, Parliament put very substantial locks into the CCA, probably wisely at the time, but we may be finding that that has raised issues, which we have explored already in this conversation.

Do the Government have a resolved opinion on this going forward? They do not. Will the Government think about these matters? Yes, they will, and we look forward to hearing your committee's deliberations.

Lord Howarth of Newport: I am happy with both those responses. Of course we are proud of the way we do things in this country, and of course we need to think about how we can do them better.

Q277 **Lord Beith:** When Ministers say that the rules are clear and talk about enforcing the rules more strictly, what do they mean by “the rules”?

Lord Bethell: That is a really, really important question. I have found public attitudes on this quite interesting. As I said, our priority and inclination has been to try to do everything through common sense and consensus and to try to persuade people to use the basic principles rather than to be instructed.

The public do want to know what is right and wrong. They want to have clear decisions on this. You only have to think about where there have been potential infringements—the poor Prime Minister and his bicycle. People want to know exactly what is on the right side of the line and what is on the wrong side of the line. I have spent a lot of my time handling questions about, say, two parents who are divorced and one child has asthma, and extremely complicated interpretations of the law. I do not know if I mentioned it, but a shielding matter was raised in the House of Lords last year that was 70 pages long. That was met with a huge amount of derision from noble Lords.

The reality is that those who are shielding wanted to know what they could and should do. That letter is 70 pages long, because we are responding to questions that have come in from those with honest and well-intentioned questions on that.

We have at times given guidance, and very often, particularly when we were trying to move quickly in response to events, we have issued guidance that does not have legal enforcement. Sometimes we have had to back up that guidance with legal enforcement. Our preference has always been not to be in the situation where we are issuing penalties and having to go into legal enforcement. But I have to say that I have found that the public prefer to have clarity, and sometimes clarity is possible only by putting something on the statute book and subjecting it to the scrutiny of lawyers and legislators in order to be absolutely crystal clear about what something means.

You are entirely right that sometimes we have guidelines and they may be informal, sometimes we have official guidelines that are printed on GOV.UK, and sometimes we have absolute law that is laid down in statutory instrument or even in primary legislation. There is sometimes some haziness between that. It has been frustrating. I do not think it is necessarily all bad for there to be a little bit of graduation between those levels, but it does present a communications challenge.

Lord Beith: When you are threatening a member of the public with an on-the-spot penalty, ought it not be clear whether you are doing that under the authority of law or you are simply saying, “I think people should do this and I’m fining you because you are not doing it in that

way”?

Lord Bethell: Yes, I agree.

Lord True: That certainly should be the case. Obviously the Home Secretary addressed this matter to some degree yesterday in her press conference. Police have also spoken on the matter, and you have also taken evidence from senior police officers.

There are difficulties. There is a great range of opinion in the country. We do not say that there are many ways to skin a cat anymore, but there are certainly many different ways in which British people make a cup of tea, so there is a difficulty in guidance and judgment.

The Government have tried to leave a lot to guidance. I agree, as Lord Bethell has just said, that it is not satisfactory that either the police or members of the public should be in a position of uncertainty on whether something is unlawful or not. If the Government can do better on that, the Government will seek to do better. Obviously a tremendous amount of material is communicated to the public in many different fora. I am amazed by the amount of material that is on GOV.UK, for example, and great efforts are made to publicise things locally. There will always be doubt in certain people’s minds. We could never pass a law to tell people how to wash their hands. “Wash your hands, keep space”. People know they should keep six feet apart. I find when I walk along the road that sadly they do not anymore. I try to do so. Does that suggest that you should try to pass a law to say that people should keep six feet apart, or two metres, or whatever it is in the Napoleonic measure? How would that be enforced? It is very difficult.

These are the kinds of questions that law enforcement and those in the Home Office who are considering these things obviously have to wrestle with. We acknowledge there is a difficulty. The Government have tried to be as clear as possible, and the Government learn at each stage and seek to improve both guidance and the clarity of the law.

Lord Beith: There is real difficulty in establishing what the law is. If you want see what the current exceptions are in the most recent regulations that determine what the public can or cannot do, you have to read a regulation that consists entirely of amendments of previous pieces of legislation, which cannot be understood by themselves because they delete a word or something like that. You go to the preceding legislation and they are amendments to Schedule 3A to that legislation. Then you go to that and you find that Schedule 3A does not exist, because it was added to the legislation by a further piece of legislation. So you have to put all those three together in order to know whether it is permissible to make a particular journey to help a vulnerable person. The public are not often given a very clear exposition of what the law is and therefore what they really must comply with.

Lord Bethell: I agree with you, but what you have just alluded to is the nature of the writing of British law. That is not new to the coronavirus epidemic. It is just a feature of the way we write law.

The essence of what I am saying is that we try to have very clear communications to the public. We learned that if we were too complicated, adherence declined, and that, actually, simplicity is more important to adherence than complexity and trying to account for every exception. That is why we moved to things like the rule of six and the 10 pm curfew, which were emphatic, crystal clear and easily understood. That is why we simplified a lot of the isolation arrangements; at one point, you may remember that there were different days for different types of isolation. That was because it was common sense, but in addition our behavioural insights team gave us the feedback that things were so complicated that it was actually presenting a challenge to adherence.

Trying to match very simple and easy-to-communicate messages with the application in law is quite tricky. You would think that simple concepts would be easier to put into law, but sometimes they are not, particularly when you are trying to legislate for exceptions as well. That has been one of the learnings we have had and one of the things that we are very much focused on doing now.

Lord Beith: It would be possible, of course, to write some of these regulations in a more consolidated form, which is to say it would be possible to include within them the things that they are amending. But I presume that there is considerable pressure on parliamentary draftsmen doing this work. That is illustrated by the fact that some orders have been available to be seen only after they have come into force, or they have been physically inaccessible until they have already come into force. Are the Government still facing problems on that front?

Lord True: As Lord Bethell has said and we all know, British law is written in a particular way and is not always necessarily the easiest to read.

Of course there have been challenges in drafting legislation and secondary legislation overall. I have referred, obviously, to the parallel task of presenting to Parliament a large number of statutory instruments relating to the ending of transition.

My own view is there is no incapacity either in quantity or in ability on the part of draftsmen. I think they are doing a remarkable job under great pressure. The way things are written would need an all-round review of the way our law is written, which is slightly beyond even the purview of this inquiry, I think. It is a challenge. The Government do try to put the guidance and the law out, on the GOV.UK website certainly, and to work with local authorities and others to get information out to try to explain what is said in the law.

At the end of the day, I believe that sadly there will always be grey areas and areas for judgment, even on the enforcement of the law. For example, local authorities have a responsibility to deal with premises. They do not police people, but they do deal with premises. If an inspector sees that someone has gone into a shop without a mask on, they could exercise a penalty in those circumstances. Someone who is exercising a judgment, whether it is a police man or woman or a local authority officer, has to decide whether to issue a warning or what to do.

We have to accept that the flipside of what you quite rightly say are sometimes uncertainties that we should try to iron out as far as possible is that there will be judgments—judgment by individual members of the public and judgment by enforcement officers—which have to be exercised in real places in real time.

Q278 Lord Wallace of Tankerness: I appreciate the challenges and the difficulties. We are in an exceptional situation. I am not readily persuaded by the argument that this is the British way of making law. It might be fair enough if you are amending companies Acts and have teams of lawyers and accountants to advise, and they do not come into force for another six months or whatever. But these are laws that affect the individual citizen in their everyday life. Do you not think that in these circumstances there is a case for a better way of going about consolidation? There is a challenge there, and I do not doubt that for a moment, but we are talking about laws that impact on individuals and their liberties, and therefore an extra effort should be made.

The Chair: Especially perhaps, as you were saying earlier, as this information is available on the government website. Even if you cannot consolidate the law, you can consolidate better the advice on the website.

Lord True: I would say to both Lord Wallace and Baroness Taylor that I obviously respect your experience and your judgment immensely. I am certain that the Government could do better. I am certain that all those involved in public service could always do better, and I am sure that you have good observations that we need to study and reflect on. I would reiterate it is a fast-moving and high-volume area of activity, and I personally find the way in which it is translated on to GOV.UK extraordinarily helpful, but I do take seriously, and we will take seriously, what Lord Wallace has said, certainly.

Q279 Lord Howell of Guildford: As we are in the tributes business, I will get in my own tribute to the two witnesses who shoulder a staggering burden of questions. They are expected to be polymaths on every aspect of government policy, including a lot of decisions made in completely different areas of government, so I do think their performance has been absolutely incredible and I congratulate them. I wanted to get that in.

On this central issue of confusion between what is guidance and what is law and so on, was this matter thought through thoroughly at that fatal first moment when the lawyers came forward saying, "No, you can't use the CCA"—for various, and I think slightly dodgy, reasons? That advice

was taken with the claim that there was no option, and from then on we have had this extraordinary pattern of grey areas and confusion—all summed up very well by Lord True just now—leaving the public frankly extremely confused, particularly over what parts of the United Kingdom were operating under which laws. That is where the real poison began to come into the system.

Was there not careful thought from the beginning that large areas of this whole handling would be through guidance, common sense, local judgment and local wisdom and not through a chance to try to legislate for everything, which would clearly be impossible and even now is proving impossible?

Lord Bethell: Thank you very much for your kind comments. If I can address the question of the local application of laws first, you are correct that there was a moment in the summer where it was very complicated to know whether your village or town was in this area or that area, and I do acknowledge that.

I just remind the noble Lord that at the beginning of this pandemic we had no analysis whatever of where the disease was. We were doing 2,000 tests a day. We have ramped that up and are having masses of data coming into the Joint Biosecurity Centre, with hundreds of thousands of surveillance tests a week and an absolutely detailed assessment of where the disease has spread. We have therefore moved from the very complicated patchwork to which you allude to a very clear tiering system that is much more straightforward. The tiers in every area are advertised and a substantial marketing budget is put behind it. Local authorities are very clear, and the process of taking one area in and out of a tier is now very straightforward.

That has been a radical change in the way we have done things. It is partly in response to the public's need to know where they live and what the rules are, which the noble Lord quite rightly pointed to, and partly in response to the need for parliamentary scrutiny to understand which regulations apply to what area.

At the very beginning, I remember debates where we were putting a large area into lockdown. The rural villages would say, "We have no disease here", and the towns would say, "Oh, but we need more regulations here". We were trying to carve out the village and town, and, with the best-intentioned response to fairness and epidemiological thoughtfulness, it became too complicated. The move to tiering in November I think radically changed that.

Lord True: I am also grateful to Lord Howell for his comments, but I would say that it would be wise to judge a play after the third act, not the second act, and I always advance with that sense of humility.

Repeating, not quite in the same form, the point I made before, ultimately the well-being of a nation is grounded on a civil society, and therefore the element that you can trust people, your fellow citizens, to behave and pursue life with common sense and respect for others, to act

responsibly, must to some degree be something the wise policymakers should also try to cling to, with all the pressures that Lord Bethell has so rightly outlined on our duty to protect.

We are living collectively as a society. The tension between the desire to be liberal and the need to intervene is an everlasting tension within the body politic and has been particularly dramatically brought to the front in this crisis. Every day, the people who make these decisions have to balance those factors. Most of the pressure is that they should clamp down more rather than less.

The Chair: Shall we move on to look at some of these lessons, looking forward?

Q280 **Lord Dunlop:** I would certainly echo wholeheartedly Lord Howell's comments about our two witnesses. Clearly, the pandemic has been unprecedented in our lifetime, and I want to ask about preparedness and specifically about the Cygnus exercise. We all understand that there is an imperative to ensure that legislation can be passed in timely fashion to ensure that public services can cope with increased pressures in time of crisis. The Cygnus report recommended planning for legislative easement as part of the pandemic preparedness, so what specific recommendations did it come up with, and were those acted on before the Covid-19 pandemic began?

Lord True: I will have to answer in broad terms, as I do not have a specific check of recommendations in front of me. You are absolutely right to say that the Cygnus exercise, which was a cross-government programme of work to strengthen our pandemic preparedness, was important. Key outcomes were identified that included, as you rightly say, Lord Dunlop, the need to introduce potential legislative easements for a pandemic.

What happened was that template was applied to the expected risk at the time, which was a different form, an influenza pandemic. As a result of that—Lord Bethell will perhaps also be able to comment on this—DHSC working with the Civil Contingencies Secretariat did prepare a draft emergency Bill that was ready for an influenza pandemic. That work was taken forward across government and working with the devolved Administrations and was prepared.

Then coronavirus came along and the speed with which it was possible to draft the Coronavirus Act, which is an enormous Act—I remember when I first arrived in my office I said, "How have we got to this place so quickly?"—was because the draft influenza Bill was used to form the basis of the Coronavirus Act, and that included legislative proposals, planning for recruitment, deployment of retired staff and volunteers and improving plans to flex systems in the NHS, as I understand it. So useful work was taken forward after Cygnus and that went into the preparation of the Coronavirus Act. James may wish to comment further on that.

Lord Bethell: No, Lord True puts it very well. My limited experience was that we had the benefit of having a template straight off the computer, as

it were. It was for a different type of pandemic that was envisaged, but it meant that when we wrote round to all the departments with our assessment of what might happen, they had something to fill in and could flag their own potential requirements.

That became the Coronavirus Act. It is a chunky Act but it meant that the departments could drop their requirements into something. If we had not had that, we would have been in a worse position. I know people are disparaging about the preparations, but having that template in the first place, although it was addressing a different pandemic, was a useful starting point.

Lord Dunlop: Just to follow up on that, you both mentioned it was for a flu pandemic and what we are facing is very different, so can you comment on how different the legislative response has had to be as a result?

Lord True: I personally am not qualified to comment on that because I was not involved in the specific preparation of the Coronavirus Act. I am sure we could revert to the committee if that would be helpful.

Lord Bethell: I would like to reserve my position. The one thing I would say, without overstating the point too much, is the big difference is deaths. Coronavirus is much more mortal than flu. In the flu pandemic it was thought a lot of people would be very ill, whereas the practicalities of the possibility of tens or hundreds of thousands of people dying require a different response from departments. That is why when we did the write-round people came up with unexpected requirements that you can now see in the Coronavirus Act.

Q281 **Lord Hennessy of Nympsfield:** I add my thanks to you both for the candour of your evidence this morning. Building on the Cygnus question, would it be of public service—and I think it would be—if we could have the papers and minutes of Exercise Cygnus in the way we have had the SAGE minutes? It would be a great public service for us, the committee, to have them but, more widely, a judgment could be made of the quality of the preparatory work and its utility in the circumstances in which we found ourselves. We are very fortunate in having the combination of you two this morning, if I may say so, because the Cabinet Office does declassification, if I remember, but it is a Public Health England exercise so the two of you are exactly the right Ministers to ask. It would be very helpful if you could possibly declassify as swiftly as you can the Cygnus papers.

Lord True: I would note that, Lord Hennessy, and I would say that looking at the table I see the salt is up there and I am down here. But I will take note of your comment and we will make sure that is seen by other people in the Government who are more abreast of making those decisions than Lord Bethell and I.

The Chair: Thank you. Let us move on. Lord Howell, shall we go to some more detailed devolution points?

Q282 Lord Howell of Guildford: Yes. My question is about different legal regimes and devolved Administrations and leads on to the question of the separate national regimes that have grown up to considerable public confusion, including the absurd talk of frontiers and barriers and customs officers between Scotland and England and Wales and England and so on—all of which have greatly added to the confusion and lack of confidence and trust in the Administration on which the whole success of the exercise depends.

That is a layman's view from outside. My question is: how do all these different regimes and restrictions in different parts of the UK, greatly to the detriment of the United Kingdom, present in terms of real challenges for the Government internally, and is there any rethinking on how, having brought vast extra illumination and focus on the whole devolution question, we should begin to start clearing up the mess?

Lord True: That is a question that many people ask. The reality is we do have a devolved system in this country. Those matters are devolved and obviously it is up to the devolved Administrations to decide—it is their power and duty—what should happen in their jurisdictions. We seek, and have done all through this, to maximise co-operation between the UK Government and devolved Administrations. If you look overall you will find—Lord Bethell is perhaps better qualified than I to comment on this—95% to 98% of things that happen are similar across the jurisdictions. There is co-ordination, it is well known and it is out in the public domain. The chief medical officers speak daily and there are regular conversations at a very high level. I anticipated this question so I looked up it and since 31 October there have been no fewer than 12 conversations between the Chancellor of the Duchy of Lancaster and First Ministers around co-operating on these matters. That is a matter of little more than a couple of months. So efforts are made to co-ordinate. Trying to be as delicate as I normally am, there may be certain individuals who rather enjoy highlighting that there may be a difference here or there.

Also, and this is not criticising the media, I personally find that sitting in England watching the "BBC News" you see what is happening in England and then what is happening in Scotland, Wales and Northern Ireland where I am actually not permitted to go currently. It is interesting and newsworthy but it accentuates for people who do not need to know at an individual time that different things are going on.

I am sure Lord Bethell will come in on this but my view is that generally co-operation has been very good. I know that the Chancellor of the Duchy of Lancaster personally attaches the highest importance to that and I believe that is also true in the health establishment as well.

Lord Bethell: Yes, the reality is that like shared DNA a huge proportion of our response has been completely consistent. I have sometimes felt frustrated that the headlines have led with tiny points of difference when my experience of the last week's conversations with my counterparties has been that they were incredibly cordial, supportive and constructive.

The call the Secretary of State for Health has with his counterparts on a Thursday is incredibly positive and helpful, and secures a four-nations approach to our response. I would single out the vaccine as being a good example of where the Union has massively delivered for all countries equally and fairly. No one country could have done that on their own and the vaccine is a good example of how we have all pulled together both in securing the vaccine for everyone in all four nations and also in the deployment across the Union.

Lord True: It is often underplayed—perhaps because no one wants to offend, to use this terrible modern word—the degree to which the United Kingdom Government are absolutely putting at the top of the devolved efforts the remarkable efforts the devolved Administrations are making, in terms of the armed forces, vaccine and billions of pounds of support for businesses in all parts of the UK, protecting lives and livelihoods, the national welfare system that is being applied. It would be good if more positives could be said about the collective United Kingdom effort that is going into this. Really that is all I have to say.

Lord Howell of Guildford: Can I express my very strong support for what Lord True has rightly said about the media accentuating the fragmentation of the United Kingdom? But as a result of this, wherever the rot began—and I suspect myself it was with the lawyers' advice at the beginning—there is now a huge political repair job to undertake, and indeed a constitutional job as well. Can I reinforce how much I agree with what he says?

The Chair: Okay. Lord Wallace, I think you wanted to follow up some of this.

Q283 **Lord Wallace of Tankerness:** Regarding how well the devolved Administrations have worked among themselves and also with the UK Government, I was interested to hear in the previous answer references to the welcome engagement between the Chancellor of the Duchy of Lancaster and the First Ministers since October. Another answer referred to recent weeks. Perhaps we could go back and look over the whole piece because my recollection at the very outset was there were Cobra meetings at which the devolved Administrations were involved, and there were ministerial implementation groups. Why were they wound up? They seemed to come to a halt. Were they wound up by common consent or was that a unilateral decision on the part of the United Kingdom Government?

Lord True: I do not have a specific answer to that. Obviously the crisis has unfolded in various phases and one needs to recall that there was the initial emergency and then there was a period of less intense concern—not that there was not planning and effort and concentration going on during summer. Meetings have gone on continuously. The only information I have before me is the Cabinet Office information relating to the Chancellor of the Duchy of Lancaster's discussions with the First Ministers. In addition to the ones I instanced in the previous answer, I have at least 20 meetings and calls taking place in that preceding period.

Engagement has taken different forms. As you know, the Government have a policy, as all Governments have, of not commenting on specific Cabinet committee meetings and attendance but I can assure you that certainly our efforts, and I believe the Department of Health's efforts, have been very much to engage.

Lord Bethell: I would like to reassure Lord Wallace that what has happened is from some quite notable ad hoc meetings at the very beginning there has evolved a systematic set of Cabinet Office, CCS-organised meetings at which the DAs are very much represented on a systematic and regular basis. The Covid-O, Covid-S, Covid GOLD-type rhythm of meetings, which the noble Lords will be aware of but where we do not comment on specific attendance, very much involve all our DA counterparts. When I attend meetings on all manner of regulations, policy and strategy, from international travel to vaccine rollout, DA representatives are very much in those meetings. You may not have read about them because they have become so regular and systematic.

Q284 **Lord Dunlop:** I wanted to ask about the position of local authorities. We have talked about devolution and in this country devolution is very asymmetrical. I want to ask about how local authorities have fitted into the process of consultation and decision-making. Clearly local authorities have a critical role to play in delivering the response to the pandemic and we have taken evidence from two local authority leaders. If there was a theme coming out of that session it was that for them early engagement was the key to them being able to help deliver an effective response. Can you comment generally about how local authorities have been involved in the response, the consultation and decision-making?

Lord True: Lord Bethell may want to comment afterwards. As colleagues will know, I am something of a Trekkie on local government, having spent 30 years in it, so I start from the basis that local government should be involved to the maximum.

Notwithstanding the important point Lord Bethell made, we did have a period when we tried very much to modulate and look at small boundaries and respect local authority boundaries, but it became increasingly apparent that this was a national crisis and arguably some action was perhaps delayed by trying to negotiate too much with local authorities. I do not say that in any critical way at all because that is the right instinct.

MCA, MHCLG—I always forget. The trouble with getting older is these wretched departments keep changing their acronyms every five minutes. I wish someone could stop that. Perhaps Lord Hennessy could write an important volume on the need to stop it. But whatever that department is I know it has significant and regular engagement with councils and the LGA. It found that very useful. The Local Government Secretary hosts regular teleconferences for local government leaders and chief executives. A remarkable core of people, by the way, the chief executives of local authorities, and I would like to pay tribute to the work that people

who work in local authorities at every level do. A lot of those people are the key workers who are going out and doing things in this pandemic.

MHCLG Ministers regularly speak to mayors bilaterally. We are advised, although neither of us is a local government department Minister, that there is very frequent contact and the role of local authorities obviously is extremely important. One of the difficulties is certain types of local authorities find it very difficult to make decisions themselves very quickly because of the constitutional nature of some local authorities and that has been a minor issue. But that is certainly a dimension the Government think is important.

Lord Bethell: I would emphasise that, while there have been some notable and public flashpoints of disagreement, when it has come to the implementation of a huge amount of our pandemic response local authorities have been absolutely critical. Nothing would have happened were it not for local authorities doing it. We are used to it in the Department of Health because we deal with the NHS, which is a federated structure, and we are used to the idea of needing to sell into a very large number of local implementation partners.

Working through local authorities is instinctively something we are comfortable with and are keen to do. At the beginning the emphasis was on infection control and that remains something local authorities are very much involved with. They have been involved in the implementation of testing, particularly on community testing but on every aspect of it: the support for isolation and the mobilisation of charities and support for those who are less fortunate who need help: of course, everything to do with schools and schools testing. As a result, funding has gone into local authorities to support a lot of these actions and a lot of financial support has gone in for local authorities to beef up.

There has been a capability challenge because a lot of local authorities do not have people standing around waiting to do stuff you ask them to do. They need to gear up themselves and put the resources in place. If you are trying to turn around a national response as quickly as possible then sometimes it is easier just to get on with it and for the national effort to come first. Sometimes the local authorities have to follow and move slightly at their own pace. That can create an unfortunate impression that they are being left behind. That has not been the intention but has been some of the reality.

Any pandemic response should be locally based. For any kind of infection control the first thing you learn in public health school is that local response is key: local intelligence, local implementation. Blanket national measures, generally speaking, are your last resort. Local authorities and all our local public health officials, DPHs, local resilience forums, are the building blocks of a pandemic response. They really are.

We can put in an overlay at the JBC, at the national level of analytics and scientific insight, at the CMO level of guidance and direction, but the implementation has to be done locally. That therefore needs to be

financially resourced properly. The decision-making mechanisms need to be quick and have a fast turnaround, and the expertise needs to be very much on the ground. That is something we are massively supportive of at DH and very keen to work with our local partners because we know that is the only way to mobilise effective pandemic response.

Lord True: I strongly agree with that—very strongly.

The Chair: Do not many local authorities feel that test and trace would have been much better had it been channelled through local government?

Lord Bethell: That is an interesting perspective. The truth is in this country we had no testing capability whatever, let alone at a local authority level. We were doing 2,000 tests a day, 1,400 in early February, and we got that up to 500,000, and most of that has been done quite rightly through massive industrial superlabs. We have had to put in place an enormous complex data system that is way beyond the capability of any local authority to put in place.

The implementation of community testing is something that local authorities are qualified to do. We have brought in place the support needed for them to be able to do that and that has included the military. The military has brought a combination of logistical and analytical expertise at a high level and also manpower—literally benches and people power. But it would be an act of imaginative creativity to think local authorities had the kind of expertise or resources or IT or legal or public health experience, resource or expertise to be able to do testing.

Local tracing has worked extremely well. Tracing itself is quite a technical matter, particularly when you have a pandemic where currently nearly 2 million people have the disease. This is not local outbreak management with a dozen people here and a dozen people there. This is a huge national infection.

We are doing hundreds of thousands of calls a day with an extraordinary infrastructure we have put in place, and that national infrastructure could not have been done by either individual or even a band of local authorities. But what has worked well are the local partnerships and where local authorities bring huge value is in their expertise and their connection with local people. We have brought into place better practices, better IT infrastructure, and also financial resources. Sometimes we have helped local authorities to recruit local people, or local agencies, we have given them the technology, the web portals and the data, and we have given them lists of people to try to track down, and often they are very well suited to do that final yard of support. So we have to be realistic about the capabilities on the ground.

One of the things that was frustrating, and that I would like to flag to the committee, was the arrangements over data. A lot of time, and I think distraction, was used to put in place data-sharing agreements. That was something that shows a slightly arthritic element to the way in which government works. The idea that one bit of government has to sign and

negotiate and contract with another bit of government to share absolutely essential data meant that our implementation of local tracing and local testing was delayed and also fractious in a way that was not necessary.

The Chair: Lord Beith, do you want to follow up on that?

Lord Beith: Only to say that we heard evidence both from local authority representatives and from police representatives about the difficulties they faced if they had media announcements of changes in either regulations or guidance but did not have in their hands any text of either the new guidance or new regulations. Is that a problem that you recognise and have done something about?

Lord Bethell: Yes, I do recognise that problem and I am completely sympathetic to it. It is, I am afraid, not the fault of the Government; it is the fault of the virus, this wretched, awful disease that has been confounding. If I could branch out for a second: the disease has chopped and changed and there are mysteries about it that we have not fully understood. The evolution of this new variant, which is clearly much more transmissible and powerful, was a good example of how we have had to respond very quickly. We have put massively more resources into the drafting of guidance. As Lord True has said, if you look on GOV.UK, it is amazing how good, clear and thorough the guidance is now. At the very beginning, we were scrambling to write those kinds of materials. Ministers, spads and key officials spent many a long night tapping out on typewriters the interpretation of new laws and new guidance. That has evolved massively as we have realised how important clarity is to adherence. I would suggest that the kinds of problems that your witnesses alluded to are more of a thing of the past than of the current situation.

Lord True: Local government always believes that central government could do better at communicating with it and, putting on my old hat, local government is very often right, but in my judgment both Health and MHCLG or whatever it is now have worked very hard to do their level best. Local authorities will continue to have an important role. Community testing is taking place in my local town hall at the moment. I used to lament that nobody ever went to the town hall when I was leader but now they are going there to be given a vital public service. That is a real-life example of the way in which government and local government are working together to serve the community.

Q285 **The Chair:** Can we turn to another issue that affects local government? A panoply of elections is due in May of this year. Last year, local elections were postponed. There is much speculation about what might happen this year. Can you update us on your latest thinking about whether those elections can go ahead and at what point you might be making a decision? Is it going to be a very last-minute decision? Is Parliament going to be allowed to question the timing? Can you update us on this, please?

Lord True: This is ongoing, obviously. The fundamental position of the Government is that a very, very high bar should be set for not allowing the democratic process to take place. When the Prime Minister was questioned about it in the House of Commons, he said that this is the law and the inference is, although rather strangely the entire press corps seemed to take it the other way, he did say that the matter was under review. That did not mean, as it was taken, that it was not going to happen. Of course the Government are working with electoral-related and public health bodies to consider the challenges that need to be overcome to deliver local and mayoral elections—the devolved Administrations have their own responsibilities, I am speaking here for England and Wales—and supporting returning officers to ensure polling stations are safe and the public is secure, ensuring that people are able to vote safely. Consideration is active on all those issues.

The Minister for the Constitution and Devolution is answering an Urgent Question on the matter in the House of Commons this afternoon, maybe even very shortly, when further particulars will be announced.

As to the timing of the review, the cut-off date, I would not want to be drawn at this point, but I repeat that the Government's view is that there should be a very high bar. Some elections were postponed last year. There should be a very high bar to a decision to call a halt to democracy. Obviously, if the House wishes, I am available to answer that question again in the House tomorrow when we will be able to review the matter further, but the broad position is that we are working on making it possible to have elections.

The Chair: When you say you are working on making it possible, does that mean there is a possibility of all-postal-vote elections?

Lord True: That is not the Government's view, no. We do not believe that it is necessary to have an all-postal vote. We do remain of the view that all-postal voting does increase fraud risk. I will not tread on the delicate feet of our transatlantic cousins on this point and certainly would not want to draw any inferences from what may or may not have been said or done by anybody. Also, some people do like, even in these circumstances, to cast their vote in person. So all-postal voting is not something we favour, but we are looking at the methodologies of voting, proxy voting, and so on and so forth. But the Minister for the Constitution and Devolution will have something further to say today.

The Chair: Finally on that question, though, you have had experience of lots of local government elections, as have many other people. There is surely a practical difficulty, with social distancing, in holding a count where people can have confidence in the count and scrutinise it in the way that they normally would.

Lord True: The count is obviously something that both officials and returning officers have to reflect on. As I understand it, additional resources are being and have been provided to local authorities to help put Covid-secure voting measures in place and obviously to consider

matters in relation to the count. I am not advised to answer specifically on the count point, I must tell the committee, but I will ensure that the committee is told specifically what consideration is being given to that aspect of voting, which I agree is important, particularly in the light of what we have just seen in another place.

The Chair: Thank you. Can we widen this out a bit now? Lord Hennessy, do you want to take this question a bit wider?

Q286 **Lord Hennessy of Nympsfield:** A question for Lord True: the Conservative Party manifesto for the December 2019 election raised expectations, indeed it undertook, that we would have a commission on the constitution, rights and representative democracy. Do you agree that Covid Britain's experience has stress tested our institutions, our governing arrangements, indeed the very devolved settlement of our kingdom, and increased the case for a panoptic review of the constitution—not doing it in little slices, which is the British way, but in a big, overall way? Has that disappeared off the agenda or do you think that now is the time?

Lord True: You have been very kind to me in the committee and I would return the compliment by saying I thought I was speaking to the living embodiment of the panoptic view of the constitution.

The position currently is that we agree and remain committed to looking at the broader aspects of the constitution. I think that perhaps thinking is evolving on whether we are of the view that a single panoptic group is the way to go forward. We have decided, given the very broad nature of the matters concerned, to take forward the work in a range of workstreams. We have the independent review of administrative law, which obviously persons not unadjacent to you are familiar with, looking at how Executive actions challenge judicial review. That has been going on. There is a review into the operation of the Human Rights Act, under Lord Justice Gross. We call it the Gross review. We have published a draft Bill now before Parliament on repealing the Fixed-term Parliaments Act and that is having proper pre-legislative scrutiny by a Joint Committee. So in a sense, the answer is not the one that Lord Hennessy wants to hear, probably. We are bringing forward legislation on the defending democracy programme to safeguard the integrity and scrutiny of our elections. There will be a Bill on that in the next Session.

We do believe that, going forward, the range of workstreams is probably the best way to apply the best independent expertise to each of these areas. That does not mean, of course, that there is not a panoptic institution called Parliament that will not take an overall view of the matter. That is the current, evolved approach to these matters. I believe I am being questioned in the House tomorrow on this one as well.

Lord Hennessy of Nympsfield: Are you suggesting you can outsource this to Parliament and give it to us to do?

Lord True: No. Nothing is outsourced by Government to Parliament. Parliament is the supreme authority in this country, of which a

Government is a servant, as I construe at least part of the constitution. The Government is also the servant of the Crown. I am saying that Parliament certainly will have free views on all these matters and committees such as yours—there is a Constitution Committee of the House of Lords, for example, and committees in other places—will be able to bring that broader view, and no doubt will do so, if you feel it is necessary. The Government's position is that these focused, complementary approaches probably, on reflection, are the best way to go forward.

Q287 Lord Howell of Guildford: I love that phrase "arranged workstreams". I must remember that when my wife asks me to take out the rubbish and I have forgotten.

I spoke earlier about the need to repair our constitution. I think that is probably wrong. What surely arises here is reform, greatly accentuated by this Covid saga, because the technology really is out of the bottle. It has been obvious for two decades or more that the information revolution imposes new kinds of democracy on us and that fundamental changes will be needed. Indeed, people such as the former Prime Minister Gordon Brown are reminding us of that every day now. It is common parlance that a shake-up in the entire structure is coming and the question is whether it is in bits and pieces or panoptic. I see that it is a very difficult dilemma, but that those issues need to be addressed in a fundamental way surely is now fully recognised.

People express surprise about what went on at Capitol Hill or with the gilets jaunes, and so on. That is the new pattern: e-enabled protest on an increasingly violent and massive scale, unless we are able to devise constitutional reforms that hold kingdoms such as ours together. The glue has crumbled on the old forms so new glue is needed. I would like reassurance from Lord True and Lord Bethell that they are talking to their colleagues in these terms and not letting it all dribble out in ways that will leave us far behind as the information revolution races ahead.

Lord True: I accept those observations. I do not think Lord Howell intended to be gloomy; he intended to be realistic. There are great challenges. It is very easy—and there is not much time—to get discursive, so I will not get discursive, but obviously one of the fundamental problems with social media is that Twitter does not invite debate and it is very easy to agglomerate people who agree with you and promote a large shout. I always used to say to young councillors, "If you are in a public meeting, look at the silent people in the room, not the people who are shouting in the corner", and social pressure—usually you say you have heard enough, "We understand your point of view"—obviously ameliorates that. This does not happen in the kind of circumstance that Lord Howell was describing. That is a problem. It is a broad issue, which we all have to wrestle with.

Returning to the core point, obviously I do not think there will be—and it would be impossible to draft—such a thing as a total constitutional reform Bill that involved all these things, from judicial review, the Human Rights

Act, fixed-term Parliaments, and all the other matters. In practical terms, keeping an overall vision in mind of the kind of liberal, free, respecting each other kind of society that we wish to preserve, addressing the opportunities as well as the challenges of change, needs to inform us—panoptically, to borrow the phrase. I repeat that I think the Government think, not least because of the issue of bringing forward legislation, piece by piece, that the way to proceed in relation to the areas covered by the commission is the way I have set out. But I certainly accept the challenge laid down by Lord Howell.

Lord Bethell wants to come in.

Lord Bethell: Perhaps I can make a broad, thematic observation from my experiences more at the front line of things. One thing about this pandemic that has been absolutely emphatic has been the emphasis on collaboration. What we have seen in the last year is people who did not even know the other existed working together in response to the pandemic. You have had people in the NHS meeting people in social care who, totally bizarrely, did not know each other; people in public health working with the local authorities. I was asked about the DAs. The DAs know each other so much better now than they ever did at the beginning of this because they have been on endless Zoom calls and have been conferring with each other. The Army: everyone now knows half a dozen brigadiers in a way that they never did at the beginning of the year.

So what does that mean from a constitutional point of view? I am not a lawyer or constitutional expert, but what I know is that I would like there to be a much greater emphasis on thought put into how different things work together, not on points of difference. The point I made about the data is a powerful illustration. We had loads of rules about why people could not share data with each other. We did not have any rules for how they could share it and that is a metaphor for a lot of the problems that we encountered during the pandemic. If there is something that you can do, or you can think about, I would urge you to think about how different bits of government can be both encouraged and allowed to work with each other, for barriers to be put down, and for the spirit of collaboration to be fostered.

The Chair: I do not think I can resist the temptation to say that there is such a thing as society. But I think that the point that Lord Hennessy was making is that there does need to be an overall vision on the constitution as well and I think that that is what Ministers are reinforcing, in a way—that there is a need for a wholesome look as well as the individual looks that are being mentioned.

Lord Beith, I think you have a final area that you wanted to raise.

Q288 **Lord Beith:** Yes, a final question for Lord True. You sent to us a very timely and commendably thorough response to our brief report on the European Union (Future Relationship) Bill. What was interesting about your response was that you characterised as incorrect the section of our report calling for provisional application of the treaty so that Parliament

had time to scrutinise and approve the deal, as the European Parliament has until mid-February or late February to do. You said that the treaty was being provisionally applied prior to ratification. I have not heard anybody else in government say that, although I am sure you are correct in what you say, but it does not seem to be a theme that other Ministers want to repeat and it does not sit easily with the form in which Parliament was invited to consider the treaty. It rather assumes that at some stage in the next month, Parliament will decide whether or not the treaty should be ratified and give a view on that matter. This is a slightly academic question in the sense that nobody expects the treaty to be overturned by Parliament, but we are talking about sovereignty and who has the final decision, and indicating that we are on the same basis as the European Parliament does in many ways reinforce the concept of parliamentary sovereignty. Where are we on that?

Lord True: I do not have the legal words before me and that obviously was an advised legal text which I sent. Obviously, this is a treaty and a treaty is reached between two contracting parties. If you like, it is an extraparliamentary process, normally surrounded by the CRaG procedures, which, obviously in this particular case, because of the time, were disallowed. The EU obviously has its own procedures and the European Parliament has its own procedures and therefore, to that degree, it remains provisional and both parties have the opportunities described within the agreement. But the agreement is not provisional. The agreement is reached and has been encapsulated in an Act of Parliament.

Why did we have to do it on that timescale? I had probably better put this in detail in writing, but the EU had to enter certain matters in the official journal before the end of the year and that included evidence that the British Government had assented to the withdrawal agreement, the TCA, and to do that we required Parliament properly to assent. That was why there was a timescale. Certainly, obviously, there is a European process, which is their process, not our process, and which is going on for a certain further period.

In layman's terms, that is the position as I understand it, but I will get the lawyers to crawl over what I have said on this and correct it if necessary. The provisionality in a sense rests on the fact that the European Union is still pursuing its own procedures and we need to be satisfied of its technical final assent. But as far as the British Government are concerned, Parliament has assented, the British Government have agreed to these arrangements, and we are obviously enforcing them and applying them now, with the positive results and negative results you see on the ground now that life has changed. That is a reality.

Lord Beith: I think your letter said that it was being provisionally applied. So we will welcome your further letter because I think we have already seen different interpretations emerging as to what the situation was and is.

The Chair: We have been offered clarification there and we are running

out of time. I know Lord Howell wants to get in and then Lord Wallace wants a brief word at the end.

Q289 Lord Howell of Guildford: I will say just quickly that we are obviously entering a period of perpetual bargaining with the EU for many years ahead, as many of us have pointed out, but among the constant changes coming are those decided through the new partnership council, which will meet for six months of the year in Brussels, and of course the forest of arbitration procedures and arrangements that are being set up as a consequence of the withdrawal treaty. Will those be subject to parliamentary scrutiny, like past regulations and changes when we were members of the EU, or will they just fly straight into the law of this country?

Lord True: There is no longer any kind of concept of automatic deposit of law. That has passed with our membership of the European Union.

On these bodies, I think I did say in summing up one of the recent debates that obviously it is important that there should be parliamentary scrutiny. The Government are reflecting on the best ways to go about this but obviously it is in the hands of Parliament also. The House of Lords, I know, has agreed to a revision of its EU Committee structure and the House, I understand, is intending to sustain—quite rightly and I welcome that—a structure for examining these kinds of arrangements and things that happen within them. But this is work in progress, I say to Lord Howell and to the committee, and the Government obviously want to cooperate in every way possible to ensure the highest degree of transparency and accountability. This also involves the House of Commons, not just our House, and I cannot anticipate fully the outcome of the discussions that are taking place.

The Chair: Thank you. Lord Wallace, you wanted a quick word.

Lord Wallace of Tankerness: Yes, just to say, in thanking the Ministers for their evidence today, I must also apologise that when you were answering my question, I got disconnected. There was furniture movement in another part of the house, which led to the internet cable being removed accidentally from the router. I very much apologise and thank you very much for your evidence today.

Lord True: Not at all. I hate it when I cannot hear Lord Wallace, whom I very much enjoyed sitting behind in the coalition years.

The Chair: We will not reminisce about that too much now but I will say to the Ministers thank you very much indeed for the evidence and the information that you have given us this morning. We have some promises about further information that will be forthcoming and we will want to follow up on those and request more information, but thank you for your evidence this morning. I know you have to get into the Chamber to answer Questions today, Lord Bethell. To both of you, thank you very much indeed.

Lord True: Thank you.