House of Commons

Business, Energy and Industrial Strategy Committee

Oral evidence: Pre-legislative scrutiny: Downstream Oil Resilience Bill, HC 384

Tuesday 13 July 2021

Ordered by the House of Commons to be published on 13 July 2021.

Watch the meeting

Members present: Darren Jones (Chair); Alan Brown; Richard Fuller; Mark Jenkinson; Charlotte Nichols; Mark Pawsey.

Questions 1 - 48

Witnesses

I: Professor Paul Stevens, Distinguished Fellow, Chatham House; Peter Davidson, Executive Director, Tank Storage Association; Mark Prouse, Deputy Director, Department for Business, Energy and Industrial Strategy.

Examination of Witnesses

Witnesses: Professor Paul Stevens, Peter Davidson and Mark Prouse.

Chair: We are now going to our second panel on an entirely different topic: our pre-legislative scrutiny of the Downstream Oil Resilience Bill. Welcome to Professor Paul Stevens from Chatham House, Peter Davidson from the Tank Storage Association, and Mark Prouse, who is the deputy director for energy resilience and emergency response at the Business Department. Good morning to all of you.

Q1 **Richard Fuller:** Thank you very much to our guests for joining us. Maybe I can put my first question to Professor Stevens. By the title of this Bill, it appears that the objective is to improve the resilience of the fuel supply market in the UK. With your long experience, how would you define "resilience"? What assessment would you give of where we are currently in the UK in terms of resilience?

Professor Stevens: From a definitional point of view, for me system resilience is the ability of a system to recover from something that has disturbed it. In this context, we are essentially talking about maintaining the supply of oil products. I would, however, make the point that the use of the term "resilience" is probably not very helpful on the grounds that we might not want to go back to the ability to supply oil in a world where climate change is dictating a lot of the actual policy. I would suggest that we try to think of a different term rather than "resilience".

However, leaving it with that definition, where are we at the moment? From a UK point of view, we are in quite a good position for a number of reasons. First of all, the key to energy resilience is spare capacity. Following the Covid pandemic and the reduction in oil demand in the UK, which has been very significant, there remains a lot of spare capacity within the system. At the moment, it is all looking quite good. Going forward, the issue is more complicated. You have to ask the question, "What is the economic incentive to maintain spare capacity?" I will happily come back and talk about that if anybody wants me to.

Q2 **Richard Fuller:** I appreciate the problems with the term "resilience", but what factors might be cited as reasons for this Bill to try to improve resilience? Is it to do with people, facilities, market failure or externalities? What is this Bill trying to protect the sector from?

Professor Stevens: The short answer is, "All of the above." As I say, the UK situation so far has been reasonably good. We have had a number of problems over the last few years. The system has worked well, in large part because it has been left to the market to sort it out rather than Government intervening. You have to ask the question, "What does the Government need to do more of to improve that resilience?" Looking briefly at the Bill, one of the most obvious areas that can be improved is in terms of transparency and information. If people know what is going on, they are better able to do something about it.

Q3 **Richard Fuller:** That sounds like a very light touch indeed. Maybe I can pose your question to Mr Davidson.

Mr Davidson, welcome. The impression from Professor Stevens is that the industry is just fine, but we have this Bill. What is your perspective on the resilience of the UK fuel sector?

Peter Davidson: First of all, we need to think about the structure of the fuel supply chain in the UK, because we need to understand that there are different owners and operators for different parts of the fuel supply chain. There are the refineries; there are the terminals; there are the distribution companies and hauliers that provide the fuel to where it needs to go. When we talk about resilience, we really need to think about all of those different players within the market. That complexity and fragmentation brings resilience into the fuel supply chain in its own right, because you are no longer reliant on one organisation for the end-to-end supply chain.

Is there a need for the Bill? In general, as tank storage operators within the TSA, we would support the need for the Bill to give us a relatively clear framework about what to expect and what Government expect from us, particularly with regard to reporting and the potential for financial assistance where necessary. It is important to understand that overall context of the fuel supply chain.

Remember that the UK is reliant on imports. We currently import over 50% of diesel fuel and 70% of jet and aviation fuel. In fact, we also import 25% to 30% of gasoline to meet demand. Certainly, Paul is right when he talks about how the current pandemic has been quite a clear indicator of how resilient our fuel supply chain is. It is important to note that we have had spare capacity, fortunately, to store all those fuels that were not being used during the pandemic, particularly when we talk about aviation fuel and jet fuel.

Q4 **Richard Fuller:** That is interesting. I had anticipated that you were going to say that the downstream oil sector is very highly utilised and there is very limited spare capacity, which is essentially what the Government were saying three years ago. Has the situation changed? Is the situation that the system is pretty much full, full, full?

Peter Davidson: When we talk about thresholds, we need to think about the different players in the downstream oil sector. I cannot speak for the refiners, but certainly for terminal operating companies—they are the critical infrastructure in terms of the logistics of getting that fuel to where it needs to go—it is in our best interest to make sure our tanks are full, because that is where we make our money. We are effectively renting space or trading in fuel and bringing that fuel into the UK.

We want to minimise spare capacity as much as possible. We want to have the maximum percentage of volume throughput, because we get paid for the amount of fuel that we are pushing through our terminals and out on to the roads. I come back to what I said before. We have clearly seen a downturn in demand over the pandemic. Any spare capacity is effectively being used for storage of product, and we would probably expect to see a continuing downturn in demand as we go through the energy transition over the coming years.

The challenge that we have, particularly with regards to resilience, is how we balance the energy transition, because there is still going to be ongoing demand for traditional hydrocarbons for jet, petrol and diesel. We need to balance that with managing the energy transition, with new products coming on the market—biofuels, renewables, hydrogen or whatever it may be.

Q5 **Richard Fuller:** My colleagues will get into that, but I want to go back to Professor Stevens on this. I am trying to get my head around something. Maybe one of the issues is that we need resilience because we have strained capacity, but both of our witnesses so far have said that we have a context in which demand is on a downward trajectory. If the capacity is okay now, the expectation is that it will be okay in the future. We have also seen a reduction in the number of refineries over the years. Professor Stevens, is that an issue of concern? Essentially, because the industry sector is looking to optimise individual corporate profits, is that going to overstress the system? Is there some evidence of that given the reduction of refineries in the UK?

Professor Stevens: Yes. There is a basic problem in the downstream, which is that it has always had difficulty in making money for a variety of reasons. I could give you a long lecture about why that is the case, but I will not. The other complication is that, because of the economy's bygones rule covering variable and fixed costs, it takes quite a while to close down capacity. Of course, demand has fallen dramatically in the last year or so because of the pandemic, which means you are still going to retain a degree of spare capacity.

The problem is, in a world of poor profitability in the downstream, where is the incentive for private companies to maintain that capacity? Traditionally, if you had spare capacity and there was an outage or a shortage, the incentive was that you could increase your prices and offset the cost of the capacity. However, if you are a private company, doing that leaves you open to the attack of exploiting the situation. Governments in the past have often prevented suppliers from increasing prices. You have this perverse incentive system, which goes against maintaining a degree of spare capacity.

Q6 **Richard Fuller:** Is that a reason why the number of refineries has reduced over time?

Professor Stevens: The reason why refinery capacity has been reduced is because, as I indicated, it is very difficult to make money in refining for a variety of reasons. The refinery sector has not been a particularly good investment for many large companies. As soon as they are able, they will close them if they are not making money out of them.

Q7 **Richard Fuller:** Another reason put forward for this effort on resilience is to do with disruption. Many people will probably recall a couple of those occasions in the past 20 years. It does not come along all the time, but when it does it can have a tremendously negative impact on many people going about their business. Has the industry not done a good job in responding to those industrial issues, or has it done a good job?

Professor Stevens: On balance it has done a good job, in the sense that the outages or shortages have been relatively short-lived. The system has managed, largely because of the flexibility in the system. On balance, yes, I think they have done a good job.

Q8 **Richard Fuller:** Mr Davidson, do you concur with that? I am struggling to find the reasons here. I can see some of the problems, but most of the answers from yourself and Professor Stevens seem to point to the fact that everything is going sort of okay. Is that the case with responses to disruption or not?

Peter Davidson: Yes, I would tend to agree with Paul. We manage very well; we work closely with our colleagues in BEIS to manage potential disruptions. We have various different schemes and processes in place, such as Operation Escalin and the national emergency plan for fuel, among others. We manage fairly well.

Q9 **Richard Fuller:** For my final question, I will turn to Mr Prouse from the Department. You have listened to what our witnesses have said. They have talked about some of the resilience issues in the UK. To my ears, it sounded fairly benign. What is your thought about that? If things did go wrong in the UK, is it not true that there is the ability for us to draw in supply from overseas as well?

Mark Prouse: I would not necessarily disagree with the broad picture presented by Peter and Paul. The downstream oil sector has broadly done a good job in responding to disruptions over recent years. However, those have been responses to disruption. There has been a disruption in fuel supplies to the consumer. The sector has been flexible, adapted itself and then responded, and the fuel disruption is kept to a minimum.

What this Bill will allow us to do is to take action in advance of disruption. Clearly, it is better to prevent the disruption in the first place than be really effective at responding to disruption. We want to minimise that risk. Peter alluded to the move towards net zero and the transition. Fuel supplies are going to be very important through that. Demand is going to be reducing, particularly for road fuel, through that period. We want to ensure that we can maintain those fuel supplies as the flexibility in the system reduces. We expect more infrastructure to fold over the coming years as the economics just do not stack up. These powers will allow us to prevent those risks from occurring.

In regards to international supplies, you are referring to the International Energy Agency’s oil stocking obligation. We do have that capability, but that capability is not designed for the emergency distribution of fuel to alleviate a fuel shortage; it is very much a market measure designed to lubricate the market and to ensure that fuel continues to flow during that time, and the market incentives are there to allow it. It is probably worth noting that it has been deployed only three times, and it does not feature as part of our contingency planning for fuel disruption. We do not factor in oil stocking obligations to support our fuel supplies in an emergency.

Q10 **Richard Fuller:** As a final question for you, Mr Prouse, what makes you think that the Government will be better than the businesses whose day-to-day focus in their sector is on avoiding disruption or acting in advance of disruption? What makes the Government feel they are going to be so much better at that?

Mark Prouse: It is not that we are better at it, but it is part of a collaborative relationship. Peter alluded to that in his statement. We work in partnership with the industry. Government have better cross-cutting situational awareness.

Richard Fuller: I am so sorry. I have no idea what "cross-cutting situational awareness" is.

Mark Prouse: BEIS has a better view across the whole of the oil sector than individual companies do in terms of the tensions and pressures that exist, many of which cannot be shared in advance between companies that are in competition with each other because of competition rules and commercial sensitivities. We will be able to work with the sector collaboratively to see those risks coming forward and to take measures that may not be in the commercial interest of an individual company but will be in the national interest in order to ensure continued fuel supply.

Q11 **Alan Brown:** Trying to stick with the rationale for these measures, Mark, the Government's 2017 consultation had three examples of fuel disruption: one was the Buncefield refinery fire; one was the financial failure of a refinery; and another was industrial action. In each of these three examples, the actual impact of the disruption was limited and the industry responded well. You seem to have suggested that yourself. Do these examples illustrate the need for this legislation? What do you say to the criticism that the legislation is too heavy handed in terms of what it allows the Government to do?

Given you said earlier that the good thing about the Bill is that it allows the Government to take action in advance rather than reacting, two of the examples you gave in the consultation would involve reactive measures. Nobody can anticipate a fire, and you are not going to act in advance of an insolvency. Do those examples really justify what the Government are proposing?

Mark Prouse: I am not sure I would agree that they had minimal impact. Buncefield cost the aviation sector £250 million in disruption, which is a fairly significant disruption.

Q12 **Alan Brown:** On that, what does this Bill allow the Government to do that would have mitigated that £250 million impact to the aviation sector? Would this Bill have prevented that impact?

Mark Prouse: Not necessarily, no. You are right. An explosion is hard to predict, and there are already health and safety regulations governing hydrocarbons to try to mitigate that kind of risk. Every incident is different and needs a nuanced approach. The powers of direction that are contained within this Bill, as well as the financial assistance power alluded to by Peter, would allow us to direct the industry to take specific action, whether that be to prioritise fuel in a particular way, to shift the balance of fuel being refined or imported to support where it was needed, or, potentially, as a last resort if required, to look at the financial assistance options open to the sector.

You mentioned financial insolvency, and that is an area where pre-emptive action would be able to be taken in the event that we see an insolvency coming. We can prepare the sector to develop risk-specific plans for whatever insolvency is potentially at hand, to get ready to pick up the capacity of fuel distribution that is being lost from that insolvency. That is an example where action in advance would be able to be taken.

Q13 **Alan Brown:** Is that not something the Government could do in collaboration with the industry, rather than requiring this legislation?

Mark Prouse: Competition law and commercial sensitivities prevent that. They also prevent us from getting information in a timely manner from the companies impacted through the insolvency. We rely very much on the voluntary provision of information. If the owners of that company decide not to share or not to be forthcoming, it significantly limits our ability to take those actions.

Q14 **Alan Brown:** Peter, do you agree that the measures contained in the draft Bill are proportionate to the risk? As Mark outlined, is this legislation really required to allow the Government to deal with the situations that arose before? Will the legislation smooth things going forward?

Peter Davidson: To be honest, I generally agree with what Mark has said. The devil is in the detail, as it always is. We will need to have further scrutiny on the level of proportionality that is going to be applied to see how it applies in practice, but that is why we have very good links between industry and our colleagues in BEIS to have those discussions in advance.

For me, the importance of this Bill is going to come into play when we start to talk about the energy transition, which I know we will probably touch on later. That is where I see the biggest potential threats to the supply chain. If we take, for example, some of the large import terminals, 80% of their business may be dealing with hydrocarbon imports. Clearly, the owners of those businesses are now looking to the future and where we are going to be in five, 10 or 15 years' time. That market is potentially going to reduce for us.

Having a Bill and a framework like this in place will assist in those conversations with regards to looking at resilience where it actually matters and putting a formal framework around those discussions. That does not mean we will not continue our usual bilaterals with Mark and his team at BEIS, because it is at that level that we sort out the detail. Having the Bill gives us a framework that we can all use to understand what we need to do to improve resilience across the UK.

Q15 **Alan Brown:** Are you effectively agreeing that the industry needs more Government involvement to increase its resilience? Is that effectively what you are saying? This is the day-to-day stuff that the industry deals with. You are looking for more Government involvement.

Peter Davidson: In terms of whether we need it, "need" is quite a strong term. It will help, yes, because it gives us a clear framework on what to expect. As I said before, the devil is going to be in the detail. Those are the discussions that we must maintain on an ongoing basis with BEIS.

Q16 **Alan Brown:** Professor Stevens, there is a bit of consensus there, it seems. Would you agree with the Government's argument that their existing powers do not allow them to take pre-emptive action to prevent fuel disruption? Mark outlined that this is why this Bill is required. Is there sufficient justification for this legislation?

Professor Stevens: I cannot see a great deal of value added by this legislation in terms of what is already available to the Government to change things. The only area that could become important in terms of the Bill relates to financial concerns. As we go forward, a lot of companies will be looking to divest themselves of their assets, in part in response to the growing change resulting from the energy transition. The danger there is who they are going to sell these assets to. The Bill's setting out of the need for some sort of monitoring of who is going to be able to buy is something of value. Otherwise, I cannot see a great deal that the Government cannot already do simply through existing legislation and their emergency powers.

Q17 **Chair:** Professor Stevens, I agree with your assessment. I am struggling to understand why we have this Bill before us, to be honest. The main thing I take from the evidence this morning is that, as we transition away from oil, there will be increased risk to the resilience of the system, perhaps because businesses go bust or because they want to sell as they are not operating those assets anymore. This Bill is not about buying those assets, is it?

Professor Stevens: No, it is about monitoring who can buy them. That is potentially important, because it lays out the ground rules that the Government will use when determining whether these takeovers or whatever you want to call them go ahead. There is a degree of value in that, if only to protect the value chain.

Q18 **Chair:** We see these problems in other industrial sectors, where businesses are declining and assets are sold on and on and on. Investment reduces along the way, and ultimately it ends up with the Government having to intervene. What happens if nobody wants to buy an asset?

Professor Stevens: If nobody wants to buy it, nobody will buy it. Of course, I remind you that over the last 20 or 30 years a great many refineries have been sold for $1. If you are selling a refinery for $1, somebody will buy it, even if it is only for scrap.

Chair: Yes, quite.

Peter Davidson: The point Mark made earlier that this Bill is really looking at how we can be more proactive and less reactive is an important one. We need to stop looking backwards at what happened in the past with things like Buncefield or, even more recently, Colonial Pipeline and other such incidents. The strength here is helping us manage and navigate through the energy transition.

Secondly, I object to the term "declining sector." Again, this is why you need to break up the downstream oil supply chain. From my members' perspective, as the owners and operators of terminals that import, export and distribute product, we see this as an evolving market. What it means is that we will be importing and exporting different types of products. The importance of this Bill is that it helps us manage that transition when we are reducing the volumes of traditional hydrocarbons that we are supplying into the UK market and replacing them with effective alternatives.

That is a very difficult balance to strike, because you need to understand what those products are going to be and the time at which you need to do it. To have this Bill sitting in the background, particularly with financial constructs that may help our sector with that transition, is a very important point.

Q19 **Chair:** When you say "transition away from traditional hydrocarbons to replacements", what type of replacement products are you referring to?

Peter Davidson: They could be renewable fuels or biofuels. We might be looking at hydrogen or ammonia, for example, for shipping. All sorts of different substances are being looked at and explored. If we look at the most recent developments, hydrotreated vegetable oil is becoming very much of interest to certain sectors of the transportation market. That is one good example of seeing where the transition goes.

For a large import terminal that has several large storage tanks, one is storing jet, another is storing gasoline and another is storing diesel. That is going to migrate; it is probably going to change and evolve into a larger number of smaller tanks storing different types of products that will be blended together to meet the demand of transport fuels going forward. That is why I object to words like "declining industry", because for us, as tank storage operators, import terminals and distribution terminals, it is an evolving market that this Bill can help to support.

Q20 **Chair:** That is super, thank you. In terms of the powers in the Bill, I understand that the industry response to the initial consultation was looking for a light-touch approach in terms of the drafting of the Bill. Would you describe the Bill, as drafted, as a light-touch approach to regulation?

Peter Davidson: Yes, generally it seems fairly light touch. The penalties that are discussed are extremely high, but, that said, everybody wants the same thing. Everybody wants to make sure we can continue to provide fuel to consumers.

I keep saying the devil is always going to be in the detail, particularly when it comes to direction, which is really where the light touch applies. My understanding is that there are two aspects to direction. The first is being able to instruct businesses directly. For our sector as terminal operators, we do not have any significant concerns with that, because we will be working in the same interest. The second part is the power to make legislation. To be honest, provided we go through the formal consultation processes and discussions that we do with Government as part of that legislative process, again, that should be sufficient to control any outcomes.

Q21 **Chair:** You referred to the power of direction, and I am conscious there is a power in part 2 of the Bill that says the Secretary of State may direct the businesses that you represent as he or she considers necessary, even in potentially adverse situations. To me, that power of direction basically says the Secretary of State can ask you to do whatever he likes. Is that the bit you are worried about?

Peter Davidson: Yes. The bottom line is that, yes, we would be worried about that, but we would certainly expect to have a dialogue with Mark and his team before any particular direction was given by the Secretary of State.

Q22 **Chair:** Are you looking for anything in addition, perhaps guidance about how those powers may be used? Are you content with the Secretary of State, whoever he or she may be in the future, having the power to give you a call and tell you what to do?

Peter Davidson: That is a very good question. At the end of the day, the more guidance that is available on all the measures discussed in the Bill, the better it will be, because that will give us a very clear understanding of how they are going to be interpreted and applied. Again, this comes back to what I said before: the devil is in the detail. The more guidance that is available to help us interpret and apply, the better.

Q23 **Chair:** Mark, can I come to you on that particular clause? This power of direction is very broad. As Peter noted, there is no guidance about how it would be used in practice, what the procedure would be or even a guarantee that there would be engagement with industry before they were directed. Do you have any comments on that particular power?

Mark Prouse: A cornerstone of all of this is continued engagement and collaboration with the sector. This Bill is absolutely not designed to replace that. It is a key part of it. Government and industry will need to collaborate as we move forward. If we intend to use the specific direction power, we have to demonstrate that the direction is fair, reasonable and proportionate and does not result in undue impact on market competition. To do that, we would need to talk to the industry and understand how best to deploy it.

We see it firmly as working hand in hand with them before issuing any direction. We would not anticipate issuing a direction out of the blue that has not been discussed with them. It would be counterintuitive to do so. As part of the work—this is pre-legislative scrutiny—we are preparing guidance across the powers, and we continue to engage closely with the sector to talk through and discuss this so we have a shared understanding of how we would use these powers live, so to speak.

Q24 **Chair:** It is good to hear that guidance is being produced. I understand there are similar powers to this power of direction in other pieces of legislation, such as the Offshore Safety Act 1992. Are these powers used at all, or are they just a backstop in case we are in an urgent situation that we have never found ourselves in before?

Mark Prouse: I cannot comment on the use of other powers that I am not familiar with. I would not say they are a backstop for an event we may never have seen before, but they are a late resort in our suite of tools to deploy. We have not put measures in the Bill that we do not anticipate using, but we do not anticipate using them often. That would be my view.

Q25 **Chair:** If you could write to me about how often the powers in the Offshore Safety Act 1992 are used, that would be an interesting comparison, which I would be keen to understand.

Mark Prouse: That is no problem.

Q26 **Chair:** Thank you. The document here even talks about how much existing legislation is already in place. For example, it refers to the Energy Act 1976, the Civil Contingencies Act 2004, the Offshore Safety Act 1992, which I just made reference to, and the Enterprise Act 2002. Why are the powers in those pieces of legislation not adequate as currently drafted?

Mark Prouse: Primarily, all of those powers are for deployment in an emergency that is already happening. We would have to wait for an emergency. Taking the powers in the Energy Act, for example, the Government would need to declare a national emergency before we could leverage them. What we want to do here is take pre-emptive action before an emergency situation.

Q27 **Chair:** Hang on, Mark. Can I just interrupt you here? Are you telling me that you have foresight of when an emergency is going to happen?

Mark Prouse: We can have foresight of when an emergency is potentially going to happen, absolutely.

Q28 **Chair:** How?

Mark Prouse: If we are looking at a major insolvency of a player in the market, we will see that coming before it happens. Depending on where in the downstream oil sector it is, an unmitigated insolvency without planning in advance may result in fuel disruptions. That in turn could result in panic buying, which would lead to the kind of disruption we have seen over the years that has caused an emergency.

Q29 **Richard Fuller:** Why would we put on the statute book such draconian powers, which mean the Government can choose to intervene at their own whim when they think there is an emergency?

Mark Prouse: Because the Government, as I said at the beginning, are better placed to take a view of the national impact rather than individual companies that will likely be operating in their own commercial interests. That does not mean to say they do not want to continue supplying fuel. Peter made that point well. We share those objectives, but the Government will have a better perspective of that national impact.

Q30 **Richard Fuller:** Is that not a very state-centred view of the way society works? The state already has powers, as we have already discussed, in many other places. This sounds extraordinarily like state overreach. Maybe the challenge is that I am just not getting what the rationale is to have these draconian powers of intervention on the statute book in addition to the ones you already have.

Mark Prouse: As I have explained, those existing powers are for use once an emergency has already occurred. Paul indicated one definition of resilience earlier. Part of resilience is being able to take action to prevent an emergency occurring, not—

Q31 **Richard Fuller:** I am sorry, Mr Prouse. Help us here. Is it not possible for the Government now to invoke those powers when they believe there is an emergency? Presumably, the Government say, "Here is an emergency. We should do it." When you see that coming, you can say, "There is an emergency. Let us use these powers." You do not need to have a completely additional set of legislation, do you?

Mark Prouse: No. Those powers require the emergency to be happening and not to be in the future.

Q32 **Chair:** Just to make sure I am understanding this correctly, let us piece this together. The whole point of this Bill is, primarily in the context of the net zero transition, we anticipate scenarios in which downstream oil assets could suffer problems, which the Department will have foresight of because you might see, for example, that certain companies are going bust, disinvesting, leaving or whatever. Therefore, you want powers to intervene to prevent the emergency before it happens.

The one example you have given us, Mr Prouse, is insolvency. To help me understand that process, what would it look like? A company that owns a number of assets says to the Department, "This is no longer profitable for us, because we are not pulling through enough hydrocarbons. My company is going bankrupt and I cannot find new funders. I have a month to go." You say that is not an emergency under the existing powers, so you would then use this Bill to intervene to prevent an emergency. What would you then do?

Mark Prouse: In the first instance, I would hope we then start collecting information from both the organisation that is going insolvent and other parts of the sector to understand where the spare capacity is to pick up the fuel gap that is going to be created. If we found that not to be forthcoming, we would use the power of direction to direct plans to be made to pick up that fuel shortage when it occurs. We would use the information power to require participants in the sector, both the owner of the potentially insolvent asset plus the owners of the other operators, to provide us with the information to understand where that spare capacity is. All of that would be done in collaboration with the sector.

Q33 **Chair:** Very lastly from me, in relation to this power to demand information, have there been circumstances in the past where companies have refused to give you information when you have asked for it?

Mark Prouse: Yes.

Q34 **Chair:** In what circumstances?

Mark Prouse: We have had companies refuse to provide us with information in a timely manner when they are facing an insolvency, for example. We have had the same during potential industrial action and unrest. We have had companies refuse to provide us with details about the nature of the impact on their company, which makes it much harder for us to engage with the sector on broader impacts.

Q35 **Chair:** Could you write to us with some of those examples? We can keep it private if it is commercially sensitive for whatever reason. It is just useful for us to understand the situations for which Ministers are trying to bring forward legislation.

Mark Prouse: Yes.

Q36 **Mark Pawsey:** Mr Prouse, the impact assessment talks about force majeure clauses and the impact that would have on fuel resilience. How many times have force majeure clauses been invoked? I know we are being encouraged to look forward rather than back, but, as a matter of fact, how often has a force majeure clause been invoked in the industry?

Mark Prouse: It is extremely rare, that is true. There is the recent example of Total in Mozambique, which halted development of an LNG project following insurgent activity, but it is extremely rare.

Q37 **Mark Pawsey:** How did that impact consumers in the UK?

Mark Prouse: That particular example did not, but it is an example in the oil sector.

Q38 **Mark Pawsey:** Is there an increasing risk of companies invoking force majeure clauses?

Mark Prouse: As the other witnesses have said, there is an increasing risk of financial pressure within the sector, which may increase that risk.

Q39 **Mark Pawsey:** You think it is more likely to happen than in the past, but it never happened in the past.

Mark Prouse: Possibly, yes.

Q40 **Mark Pawsey:** The impact assessment says the market will fail to provide an optimal level of resilience. What is an optimal level of resilience?

Mark Prouse: The impact assessment states that it is difficult to set firm thresholds in this sector or exact criteria for resilience. It provides a range to allow us to ensure, as I have discussed, that those disruptions do not materialise.

Q41 **Mark Pawsey:** If we do not know what the optimal level of resilience is, how will we know when to take action?

Mark Prouse: If we look at economic benefit, as the impact assessment sets out, we assess the cost of this Bill for the sector to be £0.4 million over 10 years. The range for the cost of fuel disruption for one day is between £5 million and £21 million.

Q42 **Mark Pawsey:** The impact assessment relies on a Deloitte study of the economic cost of fuel disruption. How old is the Deloitte study?

Mark Prouse: The Deloitte study is from 2012.

Q43 **Mark Pawsey:** Is it still relevant?

Mark Prouse: The framework and the methodology within it are, yes.

Q44 **Mark Pawsey:** If I may just ask a concluding question, Mr Prouse, you are the director of energy resilience and emergency response at BEIS. Given the state of the electricity market, with nuclear and coal capacity being taken out, would this work not be better done in respect of the electricity market?

Mark Prouse: There is already a significant regulatory regime for the electricity market that is not in place for the oil market.

Q45 **Chair:** I think I am right in saying that we have not had the delegated powers memorandum yet to accompany the Bill. Would you be able to send that to us? We will need to consider that as part of our scrutiny of how the legislation will be used in practice.

Mark Prouse: Yes, we will look to send that to you.

Q46 **Chair:** That is the end of our specific questions. This is not a criticism of any of the witnesses, but I have to say that I have ended up more confused at the end of the session than I was at the beginning. I assumed there was a problem that we were trying to fix, and I have come away thinking that what we are trying to fix is a potential problem in the future by bringing forward a whole Bill instead of maybe some amendments to existing legislation for specific issues that may be legitimate. I do not know whether any of the witnesses want to reflect on what I have just said. Have I missed the point today, or does that seem broadly right?

Peter Davidson: I can understand your confusion, but we do need to think about the issue of resilience with regards to the supply chain as a whole. The way the supply chain as a whole works today is completely different from how it worked 20 or 30 years ago. We also need to think about resilience in terms of what we have coming to our sector, which is the energy transition. There are elements of the Bill that we are uncomfortable with. We have already spoken about those, but there are elements of the Bill that can play a particularly important part from our perspective within terminal storage in helping us through the energy transition. Those powers do not currently exist anywhere else.

Q47 **Chair:** That is understood. Mark, why was this not done via amendments to existing legislation? Why do we have a whole Bill?

Mark Prouse: That is because none of the existing legislation covers the downstream oil sector in a way that was applicable to make amendments without significantly changing the scope, which, as I am sure you are aware, is poor law making.

Q48 **Chair:** Professor Stevens, do you have any final comment?

Professor Stevens: Not really, no. I still struggle to see why existing legislation cannot be used to do these sorts of things, especially given the way in which British Governments work. Britannia waives the rules, as it were. They can pretty much do whatever they want to do when they want to do it, but I am not a lawyer.

Chair: I can see the official from the BEIS Department is shaking his head at the idea we would just do as we wish. That is probably something I might agree with. We will bring the session to an end. Thank you to the three of you for your time this morning, Professor Paul Stevens from Chatham House, Peter Davidson from the Tank Storage Association and Mark Prouse from the BEIS Department.