HOUSE OF COMMONS

Welsh Affairs Committee

Oral evidence: One-off session on Intergovernmental Relations, HC 1110

Wednesday 9 February 2022

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Watch the meeting

Members present: Stephen Crabb (Chair); Simon Baynes; Geraint Davies; Ruth Jones; Ben Lake; Dr Jamie Wallis; Beth Winter.

Questions 1-21

Witnesses

I: Dr Hugh Rawlings CB, former Director of the Department for the First Minister and Cabinet, Welsh Government, Philip Rycroft CB, former Permanent Secretary Department for Exiting the European Union and former Head of the U.K. Governance Group, Cabinet Office, and Mr Akash Paun, Senior Fellow, Institute for Government.

Examination of witnesses

Witnesses: Dr Hugh Rawlings, Philip Rycroft and Mr Akash Paun.

Q1 **Chair:** Good morning and welcome to the Welsh Affairs Committee in Committee Room 15 in the House of Commons, where this morning we are holding a one-off evidence session looking at the state of intergovernmental relations. I am delighted to be joined this morning by Dr Hugh Rawlings, Philip Rycroft CB and Akash Paun, who will help us with our investigations. I will begin by asking our panel a very general opening question, and perhaps you could introduce yourselves briefly as part of your answer. By way of starting the discussion, could you give us a brief, high-level assessment of how intergovernmental relations have worked since the beginning of the devolution area in 1999? Dr Rawlings, perhaps I could come to you first.

Dr Rawlings: Good morning, Chair. I was the director of constitutional affairs and intergovernmental relations in the Welsh Government and was responsible for a number of years for the devolution settlement, advising successive First Ministers.

I think the answer to your question is: up and down. There have been times when the system has worked quite well and times when it has virtually gone into abeyance. A number of factors have led to that, which you will perhaps want to talk about. It has not been a smooth path by any means. I think there have been difficulties on the way, some of which have been overcome, some of which have not.

Chair: Thank you. Akash Paun?

Mr Paun: We have certainly seen intergovernmental relations go through a few phases. If you go right back to the start of devolution in 1999, there were initial attempts to create formal machinery such as the Joint Ministerial Committee, which we will probably talk about, and various subject or policy area-specific sub-committees, but most of that machinery was never used or fell into disuse very soon, and the devolved Governments were largely left to go about their business. When issues did arise, they were dealt with informally through civil service channels or through Labour party channels, because Labour was the dominant party in Westminster, Edinburgh and Cardiff in that early period.

There have been various attempts to revive formal intergovernmental processes. There were attempts under Gordon Brown and David Cameron, but it is Brexit that has put the issue right at the top of the agenda, as far as management of devolution and the territorial constitution is concerned. Brexit has opened up this whole sphere of issues, where EU law has previously reigned supreme and ensured commonality across the UK. There is now this very pressing need to co-operate between the Governments that hasn't existed before.

Q2 **Chair:** Akash, thank you, that was very helpful introduction. We will get

into more detail around Brexit when my colleagues come in in a few moments. I should mention that Akash is a senior fellow at the Institute for Government. I am delighted that you are on the panel today.

Mr Rycroft, picking up on the theme that Dr Rawlings highlighted of times when it has worked well and times when, frankly, it hasn't worked at all, and given your experience, right at the heart of trying to make sense of devolution, at a very high level in Whitehall, to what extent does this boil down to issues around processes and systems, and how much is it about personalities? Over the past two years, when this Committee has had Welsh Government Ministers give evidence, we have heard lots of criticism of the way the relationship works between Prime Ministers and First Ministers, but a significant amount of praise for the role of Michael Gove. Previously, David Lidington was a figure in Government who was commended publicly by the devolved Administrations for the way he went about intergovernmental relations. How much is this about finding the right personality to make devolution work, and how much is it a systems and process issue?

Philip Rycroft: That is a very good question, Chair. Regarding my background, as you mentioned, I spent a number of years in Whitehall, where I was responsible for the UK Governance Group, which looked after constitution and devolution issues. I was effectively running that between 2012 and 2019. Earlier in my career, I worked in the Scottish Government, so I spent a lot of time in the devolved context and I have seen this, essentially, from both sides of the fence.

Personalities clearly do matter. Who is in charge of the brief in Whitehall at any given time can make a difference to the quality of intergovernmental relations on the day, but the system should not be dependent on particular individuals being in place at any one time. Structures matter, but beneath that what matters even more is the habit of mind, the habit of thinking, the habit of ways of working. To back up what Akash and Hugh said, in my experience those habits of mind, the way of thinking about intergovernmental relations, were not deeply enough ingrained in Whitehall after devolution to withstand the twin shocks of Brexit and covid.

Thinking about intergovernmental relations, structures matter, but more important is how, from a Whitehall perspective in particular, people approach it in terms of thinking about the nature and distribution of power within the United Kingdom, how that power is expressed, how it is shared, and the commitment to working with the other Governments to achieve good outcomes for all the people of the United Kingdom.

Q3 **Chair:** Thank you very much. I am going to bring in my colleagues in a moment, but could I just follow up on that answer, Mr Rycroft? You talk about habits of mind. To what extent are those embedded now? There was the shock of the Scottish referendum in 2014, and a great response under David Cameron and Jeremy Heywood, Cabinet Secretary at the time, to try to get Whitehall on a much better footing when it came to working with the devolved Administrations. How far ahead are we from that period now, as a result of that experience, covid and Brexit?

Philip Rycroft: Again, that is a good question. It takes me back into a lot of work that I did when I was responsible for leading the team in Whitehall to support Ministers through the period of the Scottish referendum and then beyond that establishing the UK Governance Group, trying to inculcate the learning from that time more deeply across Whitehall. I have to say that it was uphill work. It was uphill work even in a time essentially of existential threat to the United Kingdom: the time of the Scottish referendum. I think there was a degree of complacency when that campaign started, because people looked at the opinion polls and thought, "There's no way that the people of Scotland are going to vote for independence." That complacency began to fray a bit towards the end, and as you will recall, by the end people were getting very worried; there was that famous opinion poll that had the yes side ahead.

At that point, I had the attention of the senior folk in Whitehall. I remember going to meetings of permanent secretaries and people were listening—listening hard, perhaps for the first time—but after the victory for the Union side of the referendum, there was a big sigh of relief, and that feeling began to dissipate. The establishment of the UK Governance Group was designed to improve the thinking and understanding of devolution across Whitehall. We had some success in that, and hopefully my successors in those roles are continuing with that work, but it was hard work because for most Departments this is in the periphery of their vision. It is not what is obsessing them hour by hour, day by day; their priorities lie elsewhere.

It is worth remembering that most Departments either are thinking about reserved issues for the whole of the UK or, on the more domestic front, are very focused on England. Until we see deeper devolution in England, I think most Whitehall officials will not have day-to-day experience of the sort of co-working—the collaborative working—with subnational tiers of Government that is required to make it something that is natural to them. That was the difficulty we faced, and we worked hard to resolve that, but as you experienced yourself, Chair, it was not always easy going.

Chair: No. Thank you very much for that answer. It is a fascinating point you make: until there is a greater devolution in England, Whitehall leaders are not going to have the experience of working in those ways. We might come back to that a bit later, but now I am going to move to my colleague Beth Winter. If we could keep our questions and answers moving briskly, that will help us cover the ground.

Q4 **Beth Winter:** Thank you for giving evidence today. How effective were the Joint Ministerial Committee structures provided for by the memorandum of understanding? What was the reason for their under-utilisation, and what would have been needed to make those structures more effective?

Dr Rawlings: Again, the answer is "patchy". There were aspects of the JMC machinery that worked very well: JMC Europe was perhaps the best council that operated. That, of course, was one where the various stakeholders came together to prepare the UK line for upcoming European

Council business, so it was calendar-driven in a sense. Just as European Council meetings were predictable, so JMC Europe met before the Council meetings and everyone knew what the purpose of the meeting was. Rather naively perhaps, in the early years of devolution we thought that this worked well, so we should set up a JMC Domestic, but JMC Domestic did not work at all well because no one was entirely clear what purpose it was serving. It did not become part of business as usual in the way that JMC Europe worked, and after a short period of time it basically fell into abeyance. Other JMCs were set up on poverty and the knowledge economy that never really got off the ground at all.

At the top of the JMC pyramid was the JMC annual meeting chaired by the Prime Minister. Some of those meetings took place and worked very well; at other times, whole years went past when they did not happen. As you probably know, under the current Administration, there has not been a JMC of that type since 2018. So as I said, the experience has been patchy. Sometimes it has worked well; sometimes it has not worked well. The most recent example of its not working well is JMC European Negotiations, which was set up with quite ambitious terms of reference to prepare the UK's negotiating position for withdrawal from the EU. That fell apart after a few meetings.

Q5 **Beth Winter:** To dig a bit deeper, why do you think it fell apart?

Dr Rawlings: JMC European Negotiations fell apart because fundamentally, at the political level, there was no agreement on what the UK was seeking to achieve. Obviously, that was a reflection of the fact that there was genuine uncertainty in Whitehall about exactly what the referendum meant, but the original intention had been that the European Negotiations Committee would help prepare the ground for the UK's negotiating position. There was simply no agreement on what that should be, so fairly soon—after about four or five meetings—it was stopped and the UK Government took sole responsibility for preparing the UK's negotiation position.

Beth Winter: Mr Paun, do you want to come in?

Mr Paun: Yes, to add to what Hugh was just discussing, I think it is absolutely right that the JMC EN was set up with this, in retrospect, very naïve but certainly ambitious intention that it was going to be the forum in which the four Governments would reach a consensus on how to take Brexit forward. That was founded and based on a commitment that Theresa May was perceived to have made in Edinburgh shortly after becoming Prime Minister, when she spoke about not planning to trigger article 50 until there was agreement on a UK approach to Brexit. The machinery was set up to try to facilitate that,, but as Hugh said, it quickly became apparent that there was no common ground on which a shared approach could be taken; then, the Committee ceased working.

It did restart later on, though. I don't have the exact figures, but my understanding is that it met fairly regularly through the Brexit negotiation period. I was not party to the conversations. I am sure that they were not

all particularly constructive, but certainly it did lead to some positive progress, particularly around agreement on the development of common frameworks between the UK and devolved Governments that would replace EU law. That programme is still proceeding of course, and from what I can see it seems to be making quite good progress. That whole programme was started by an agreement reached in the JMC EN in October 2018, so it is not a totally negative picture.

Q6 **Beth Winter:** We will be coming to Brexit in more detail later . I suppose I am talking more generally about the JMC structures. Several have been mentioned. Mr Rycroft, did you want to add anything?

Philip Rycroft: As I have said already, structures matter, of course, but what matters more is the spirit and the intention that infuses those structures. The structures of the JMC were set up back in 2000—soon after devolution. The fact that they weren't used very much in the early years was largely because Ministers, both in Westminster and in the devolved Governments, preferred to work bilaterally. There was, largely, congruence—there were, of course, Labour-led Administrations in Cardiff and Edinburgh, as well as at Westminster. That worked politically for the different Governments.

Those structures were revived when the SNP took over as a minority Government in 2007 and could have been made to work, it seems to me, if the political will had been there. My experience of attending JMC Plenary meetings from about 2012 onwards is that it was very often seen by UK Ministers as a little bit of something to be endured, and by the devolved First Ministers as a bit of an opportunity for grandstanding. They weren't really seen as occasions to deal with big policy issues and to seek to get agreement to resolve those issues. As I say, that was the weak system and the weak set of understandings about how that system would operate that was taken into Brexit.

To pick up briefly on one point, Akash said that there may have been a naivety about the setting of those terms of reference for the JMC EN, which were quite expansive. Hugh will remember negotiating those at official level with me and colleagues from Scotland and Northern Ireland—they were signed off by Ministers—actually very deliberately, because it seemed to me, certainly, that it was far better to set off with the intention of having the devolved Governments engaged in thinking through the UK's negotiating position, rather than being excluded from it. It was a brave attempt to secure that. It did not work, but that doesn't mean to say that the attempt wasn't right at that point. I will stand by that, because it seems to me that it would have been far better, through all of this, if the devolved Governments had been far more closely involved.

Beth Winter: Thank you very much.

Q7 **Ben Lake:** Thank you for your time this morning, gentlemen. I think I would be right in interpreting the evidence you have given us thus far as that some of the less formalised arrangements may well be more effective than the formal structures. Mr Rycroft, you mentioned some of

the bilateral arrangements. Would I be correct in thinking that they have worked far more effectively in maintaining intergovernmental relations than the more multilateral fora, which I think you mentioned often become an opportunity for grandstanding?

Philip Rycroft: Yes. *[Interruption.]* Please excuse a bit of banging in the background—there is not a lot I can do about it, I am afraid.

Taken as a whole, of course, what politics tends to focus on are the big set-piece events, but on a day-to-day basis, good governance and good administration requires close working between officials and also Ministers. Take something like agriculture and fisheries: that has always been true since devolution. Officials have to work very closely together.

That continued through the Brexit time and indeed through covid. Beneath the surface of the—to use a good Scottish term—stramash at higher political level, there needed to be ongoing good administrative contacts—for example, to plan for no deal. That stuttered a bit in the early days but picked up momentum through 2017-18 and beyond, because Ministers in the devolved Governments and in Westminster were recognising that, for good administrative order, that sort of close working was required.

You have always had this distinction between the day-to-day work at the official level and relations at the political level. Just resolving problems for good governance and trying to get things to work smoothly sometimes coincided with good relations at the political level, but quite often you have seen more difficult relations at that higher political level. Those two things can run together, but it is really important to understand that the nature of devolution, the nature of governance in the United Kingdom, requires that very detailed work on a day-to-day basis, because with the devolution settlement, the line between devolved and reserved in some domains—agriculture, fisheries, transport and others—is quite jagged. You cannot have one Government saying, "We're just going to do it like this," and the other saying, "We're going to do it like that." It does require collaborative working.

Q8 **Ben Lake:** Thank you very much. Dr Rawlings, are there any examples that come to mind of where the disagreements—or the stramash, as I think Mr Rycroft mentioned—on the political level have perhaps hindered some of the co-operation on the more official level?

Dr Rawlings: Nothing immediately jumps to mind. Obviously, officials have to work within the framework or the policy direction that is set for them by their respective Administrations, and certainly there were occasions when we were talking about the European issues where there was some frustration—certainly, I recall, in the Welsh Government—about the fact that we were putting forward ideas to the relevant teams in Whitehall, who promised to take those away, and they never re-emerged. I imagine that they never re-emerged because those teams' Ministers told them that this should not happen.

However, I think it is important to take account of the fact that, on the official level, we were all civil servants. We all understood the terms of

what we were meant to be doing—understood the rules of the game, if you like—so from that point of view you were trying to make the best of it. There were never significant disagreements between officials: we all tried to work together very collaboratively. The disagreements, if there were any, were elsewhere in the system.

Q9 **Dr Wallis:** Thank you all for giving evidence this morning. How would you describe the impact that Brexit had on intergovernmental relations? Could I start with Dr Rawlings, please?

Dr Rawlings: Of course, it represented a fundamental challenge, and it also had the effect of accelerating a whole host of developments that were implicit but had to be brought forward quickly. The basis of it was initially, as we said, that there had to be a discussion about what the UK's negotiating position was, and as we have already talked about, there were some difficulties in getting the machinery to address that.

Also, of course, what we had to deal with were the consequences of Brexit for the internal governance of the United Kingdom. The fact that the system of intergovernmental relations had not developed into what you might call an established, business as usual set of processes meant that when it came to talking about how the changes to the UK's internal governance were to take place, the system probably did not accommodate those very well. In fact—as we will no doubt all come to talk about later—it was recognised that Brexit had shown up inadequacies in the intergovernmental working relationships. That led in 2018 to the establishment of the review of intergovernmental relations, because we knew that those really were not sufficient to deal with the new circumstances in which we were working.

Dr Wallis: Thank you. Mr Rycroft, would you give your views on that?

Philip Rycroft: I agree with what Hugh has said. Brexit was a shock to the system. It is worth remembering that, as civil servants, we were not allowed to do any contingency planning for a leave outcome, so there had been very little preparatory work done. We were thrown in at the deep end. This was clearly going to have a big impact on relations between the Governments, because there were fundamentally different positions taken by the leadership in Scotland and Wales—obviously, there were differences of view in Northern Ireland—throughout the referendum campaign, and then about what sort of Brexit. Remember that the Scottish Government and Welsh Government were both pushing very hard for the UK essentially to stay within the single market and the customs union. Those differences of view persisted—not just on the fact of leaving the EU, but on the sort of Brexit that we should have—and it became all-consuming. For Whitehall, as for the devolved Governments, this was enormous, and Brexit work tended to shade out pretty much everything else.

It was extremely difficult. We tried to establish the structures that we have already talked about through the JMC EN, in order to establish some sort of dialogue. But I think it probably took until mid-2018 or a little later for this to settle down into a pattern of relationships where there were

conversations going on about the practical implications of Brexit in a way that allowed some form of progress on planning for Brexit in reasonably good order, while accepting throughout all of that that the overarching political differences remained and, indeed, sank deeper into the consciousness. What we saw happening then was the Scottish Parliament and the Welsh Senedd—not around the withdrawal Act, but later on—refusing legislative consent motions for Brexit-related legislation. One of the premises on which devolution was built—the Sewel convention—came a cropper through the Brexit times, so Brexit has self-evidently had very serious impacts on the relationships between the Governments of the UK.

Q10 **Dr Wallis:** I have a supplementary question for you, Mr Rycroft. Do you think that the political differences, particularly the desire from some quarters for a second referendum, had the sorts of impacts on intergovernmental relations that were widely reported in the House of Commons late in 2019?

Philip Rycroft: There were of course many people in Scotland, including Scottish Government Ministers, who would have been supportive of a second referendum. The fact that the debate persisted for so long in some respects—whatever view you take of it—was not helpful in getting to a point where you could find some stability in intergovernmental relations. The fact that there was that political turmoil, and that that political turmoil persisted, was the backdrop against which we all had to work and the Governments had to work in order to try to agree a way forward on Brexit. That sort of agony was shared, but the fundamental point—we come back to it—is that Scotland voted to remain in the EU, as did Northern Ireland. You cannot just glide easily over something like that. In a sense, that exposed the ambiguity that has always been built into the devolution settlements. Seen from a Scottish perspective, this is about shared sovereignty—the whole Union concept is a shared endeavour. Seen from the point of view of parliamentary sovereignty, it is not like that. With Brexit, that latter view is the one that prevailed, and that was bound to create huge tensions, given those different viewpoints.

Dr Wallis: Thank you. Mr Paun, could you briefly touch on either of those points?

Mr Paun: The ground has been fairly well covered by Philip. I would reiterate the point that a fundamental problem was that in Scotland and Northern Ireland there was a question mark hanging over the legitimacy of Brexit in any form, because of the referendum results, and that inevitably made the relationships very difficult, right from the outset.

There were some quite different phases in terms of working together in preparing for the domestic implications of Brexit. We looked at this at the Institute for Government in 2019, when a no-deal Brexit still seemed to be a possible outcome of the process. Certainly, from the research we did and the conversations we had, there was a view that there was a period of very good joint working in preparing for what a no-deal Brexit might mean, and Scottish and Welsh Ministers were, for a while, regular attendees at the relevant Cabinet Committee that was preparing for this,

but that was perceived to change quite substantially after the change of Prime Minister in 2019. That goes back to points that were made earlier—that structures only really work if you have the commitment to making them work from the political principals.

Dr Wallis: I could ask many more questions on this issue, but in view of the time I will hand back to the Chair.

Chair: Thank you, Jamie. Geraint Davies, please.

Q11 **Geraint Davies:** Thank you, Chair. Philip, you will recall the situation in which the Welsh Government and the Scottish Government signed a letter to say that they thought the UK should extend the transition once we knew, in 2020, that there was going to be a pandemic, because we would then have catch-up time for negotiation and preparation. How did the JMC and the common frameworks process manage this, if at all, or was no consideration given to it? We just hurtled ahead anyway, didn't we?

Philip Rycroft: That was after my time in Government. I left early in 2019, so I was not directly involved at the time. But, as Akash has just said, by that point relations had changed again and the priority of getting Brexit done, in spite of the circumstances, was overriding.

There is a general point in all this—and I say this almost observing the issue from a quasi-academic point of view now and not as a protagonist in it—that, clearly, for the UK Government, particularly the present Prime Minister, getting Brexit done was the top priority, and that took a greater priority than resolving issues around the coherence of the United Kingdom itself. That was substantiated by opinion polling, particularly from new voters who saw getting Brexit done as the thing that the Government should be focusing on. That is just a reality of the situation.

That meant that throughout this process, when the Governments in the devolved parts of the UK said, "Hang on. Can't we go a different route? Can we go more slowly?" they have had a dusty answer, because the political imperative has been to get Brexit sorted, and that is the situation we find ourselves in now. We will come on to the review of these intergovernmental relations shortly, no doubt, but that puts us in a position where there is a lot of rebuilding, not least of trust, to be done.

Q12 **Geraint Davies:** Obviously, the mandate to get Brexit done was before we knew there was a pandemic, hence the letter that there should be extra time for negotiation, to make up for time lost because of the pandemic. As far as you are aware, the JMC and the common frameworks process were presumably meaningless in this context, and we just thrust forward at any cost.

Philip Rycroft: I would not say they were meaningless. In particular, the common frameworks process has had enormous value. Folk like Hugh and others can take some pride in the fact that those were got going. They proved to be a good means of finding collaborative solutions to cross-border issues that cropped up because of the repatriation of powers from

Brussels. The common frameworks programme was working away throughout all this time.

However, that clearly did not come out to the level that you are speaking about, which is the very big decision about extending the transition period. I do not know whether that was ever formally discussed in a JMC context—I slightly doubt it—but I think there was very little chance that the UK Government would have stayed its hand at that point, because of the priority, despite covid, to get Brexit done. The politics of the time, which we will all remember very vividly, was very visceral around all that. That was the direction of travel that the Government were determined to pursue.

Q13 **Geraint Davies:** Dr Hugh Rawlings, do you have any comment about that transition period? Indeed, in the aftermath, we had the United Kingdom Internal Market Act. How did that go down, and how was that processed?

Dr Rawlings: Philip is right that the issue of transition was never seriously discussed in any of the JMC machinery; it was all dealt with at political level, and the UK Government's position was clear.

As to the United Kingdom Internal Market Act, that was a bit of a shocker, so far as the devolved Administrations were concerned, because it seemed to cut across a lot of the work that was ongoing on common frameworks. Just to remind the Committee, the point about common frameworks was that, as a result of withdrawal from the European Union, we had to establish a regime for the management of the UK internal market, and the common frameworks process was a collaborative attempt, in effect, to do that.

All of a sudden, the internal market Bill emerged, which effectively asserted the power of the UK Government and Parliament to regulate the internal market without much, or indeed any, significant input from the devolved Administrations. The effect of the Internal Market Act was and is—unless it is mitigated by other factors—to significantly reduce the regulatory powers of the devolved Administrations.

One issue, going forward, thinking about how the new structures of intergovernmental relations will work, will be the extent to which the trust needed to underpin the operation of those arrangements has been significantly—possibly permanently—damaged by the way the internal market proposals were introduced and forced through by the UK Government. I think they have left some quite deep scars.

Q14 **Geraint Davies:** Thank you. May I ask you the same question, Akash? Do you think the Internal Market Act is basically taking back control into Westminster and the UK Government from the devolved Administrations, instead of going forward with the common frameworks process, which would provide a collaborative UK approach?

Mr Paun: I think it absolutely does do that. The United Kingdom Internal Market Act obviously does a few different things, but among those, the Act formally reserved to Westminster power over state aid for business. It was

a bit of a grey area previously as to whether that was reserved or devolved. That was an amendment made to the Scotland Act, the Northern Ireland Act and the Government of Wales Act without devolved consent.

There was then the creation of these market access principles that I think you were alluding to, which essentially require all parts of the UK to allow goods for sale in their territory if they are legally for sale in any other part of the UK. Essentially, if the UK Government sets lower environmental or food standards or something like that as far as the English market is concerned, the Scottish and Welsh Governments—it's a bit different in Northern Ireland because of the protocol—have no choice but to allow those goods for sale within their territory. Yes, I think that was rightly seen as a threat to devolved policy autonomy in those domains and did undermine the progress being made with the common frameworks.

The last important part of the—

Chair: Very briefly please, Akash. We need to move on.

Mr Paun: Apologies. Just quickly, in passing, I will say that the UK Internal Market Act of course also creates financial assistance powers for UK Ministers, giving them the ability to spend money across the UK, including on devolved policy functions relating to education, economic development and so on. That is something that really hasn't been done before and, again, it was a change made without devolved consent, so, yes, it was inevitably going to cause a big rupture in intergovernmental relations.

Chair: Thank you very much. Ruth Jones, please.

Q15 **Ruth Jones:** Thank you for your time this morning, gentlemen. I am going to bring us more up to date and look at intergovernmental relationships during the pandemic. I suppose, looking at this as an outsider, it would seem that the relationship was variable throughout. I am not sure whether you have any strong views on this, but I am wondering why COBRA and the MIGs were used instead of the JMC structures. Professor Rawlings, do you want to start?

Dr Rawlings: The short answer is that I don't really know. I had virtually left the Welsh Government by the time this started. One of the interesting questions—to which, again, I don't know the answer—is, why were the Public Health Act powers used in the first place? The Public Health Acts were devolved and therefore required a collaborative approach between the Governments in dealing with the pandemic, whereas of course the Civil Contingencies Act would have given full power to the United Kingdom Government to make the necessary provisions. But once it was decided to use the Public Health Act powers, you had to build in effective collaborative arrangements. It's possibly an indication of how fragile our JMC machinery was by the time the pandemic arrived that no one, I think, seriously thought about using that machinery, and instead it was COBRA and the MIGs.

Ruth Jones: You raise an interesting question there. Mr Paun, do you have anything to say about that, in terms of the way forward during the pandemic?

Mr Paun: From what I could see, the early period of the pandemic, certainly, was quite a high point in terms of intergovernmental co-operation. Whether using a different machinery would have made any difference I don't know, but if you look back at that period and the way the Coronavirus Act was brought forward jointly, in a sense, by the Governments—parts of the Act were, as I understand it, almost co-drafted by officials in the devolved Governments. That was something brought forward quickly and given consent by the devolved legislatures. There was a shared health—NHS—action plan, co-produced by the four NHSs, in that period. There was the initial announcement of lockdown by the four Governments at the same time. So that was a real high point, I think, and they were working well together.

COBRA seemed to be the logical place through which the devolved leaders were engaged in those discussions. COBRA obviously has a much wider remit than just UK devolved relations; it was a general sort of crisis response committee of the UK Government. I think the fact that the devolved leaders were brought into that, and the ministerial implementation groups, was a positive sign that there was a shared agreement on the way forward and a willingness to set politics aside and to simply take a practical approach to finding ways to co-operate, at speed, in the midst of a crisis. It changed somewhat by the summer.

Q16 **Ruth Jones:** Thank you. I was coming on to that. Mr Rycroft, do you have anything to add? Obviously, it was a high point at the beginning.

Philip Rycroft: I would echo what the others have said, but I think that, overall, it was a huge missed opportunity. The virus clearly did not respect borders and needed a common approach. As someone who lives in Scotland with lots of family in England, it was a sort of puzzle to decide which rules applied at any given time in the different parts of the UK. It was nonsensical, in my view.

It would have been far better to have a common regime, certainly on the GB landmass, for dealing with that common problem, but because of the devolved powers on health, that would have required the Governments of the United Kingdom to work together in a very collaborative fashion. To get into that sort of space requires effort, compromise and a bit of humility on the part of all the Governments. Look at what happened in Germany and Australia, where the federal Governments made that effort and, certainly in the first 18 months or so of the coronavirus crisis, procured better outcomes because of that.

I think it all began to fracture in about May 2020, when the Prime Minister was on the TV making announcements about changes to the rules and regulations without it being clear whether he was speaking about England or the whole of the UK. That is the moment this began to crumble. As I

said, that was a huge missed opportunity, and when the history books are written about this, I think it will be seen as such.

Avoiding that would have required very serious political commitments and effort to build those collaborative arrangements. That is hard work and requires political compromise. It is a shame, in my view, that that didn't happen.

Q17 **Ruth Jones:** Thank you very much. You made some interesting observations there. Professor Rawlings, do you want to briefly come back in with anything on how the pandemic might have improved intergovernmental relationships?

Dr Rawlings: I very much agree with what Philip has said. Cearly, we were faced with a situation in which collaboration was the only sensible way forward. It started off reasonably well, but then, for reasons that were never really very clear to me, the ministerial implementation groups were wound up, and the UK Government established two new Cabinet committees to deal with this on which the devolved Administrations were not represented. That, in a way, expressed in a system form the fact that co-ordination was breaking down.

I want to reinforce the point that Philip made about the way that changes to the rules were announced by the Prime Minister or by other UK Ministers without it being made clear to which territory the rules were to apply. That was a source of confusion in Wales because, other than the BBC, we don't have a national media. Press coverage was therefore all about changes to the rules that may well not have applied in Wales, but the media thought they did because the UK Government weren't making it clear for whom the rules were changing.

Ruth Jones: Thank you very much. That is really helpful.

Chair: Thank you very much, Ruth. I want us to get on to the review of IGR, so I ask Simon Baynes to come in, please.

Q18 **Simon Baynes:** Thank you, Chair. I thank the witnesses for their contributions today. My question is brief, because I think our time is limited. How significant was the Dunlop review to the overall conclusions of the IGR review? I will start with Philip Rycroft, please.

Philip Rycroft: I think Andrew Dunlop's review was very significant. He did a very good job, and it was a very good review. Obviously, it took a while for it to get published, but you can see and trace a lot of the thinking in the outcome of the intergovernmental relations review back to proposals from the Dunlop review.

To cut to the chase with a question that you might ask in a moment, I think the IGR review itself was very welcome. It surprised me, but surprised on the upside. It is a generous interpretation of how intergovernmental relations should operate. The language is good—it talks about mutual respect and about seeking to achieve solutions by consensus—and the structures look good, with the independent

secretariat. All of that is good, and it is good that it builds on Lord Dunlop's work.

As we have discussed pretty much throughout the session, the big question is whether this will be infused with the spirit of collaborative, co-operative working to make those structures come alive. That is the big open question, and it is very difficult to answer it at this stage.

I give credit where credit is due: credit to Michael Gove and his team for pursuing this, and credit to the officials and others from the devolved Governments who have been behind it as well. This is the sort of review that we got part-way towards in 2016—again, you will remember this, Chair. A review process was kicked off by David Cameron in 2014, and we had something that incorporated a number of the things in this review, but unfortunately it all fell over and got vetoed in late 2016, so it never saw the light of day. I am therefore very pleased to see this. It is a good step forward, but let's see how it is enacted.

Simon Baynes: Thank you. Dr Rawlings—or Professor Rawlings—do you have anything to add to that, please?

Dr Rawlings: I'd prefer to be "Dr Rawlings", Mr Baynes. My wife is a professor, and I shall get it in the neck if I claim to be a proper professor.

I agree with everything that Philip said. I don't think one can overstate the importance of this, really. At a sort of constitutional level, we have a position in which we have the premise of parliamentary sovereignty on the one hand and devolved institutions with strong, popular mandates on the other. That is a potential recipe for continuing disagreement and conflict. An effective system of intergovernmental relations is one way of mitigating that potential conflict.

Simon Baynes: I'm sorry to cut you off there. I think we are seriously running out of time, so I will hand back to the Chair. Thank you very much.

Chair: I do want some full answers on this question, so if it is okay, Dr Rawlings, could you succinctly continue that thought? It would be good to bring in Akash as well, because looking at this review was one of our objectives this morning.

Dr Rawlings: Lord Dunlop's review underpins the new system on intergovernmental relations, the importance of which I don't think you can overstate in our constitutional arrangements. It is an extremely welcome development.

Mr Paun: There is a lot in the review to welcome. It's been a long time coming, as Philip and Hugh have mentioned. I, too, am pleasantly surprised by how much progress has been made. A key element of it from my perspective is the underlying principles, as mentioned—trust and respect, and a sense that the intergovernmental machinery should be jointly owned by the four Governments. It is not a Cabinet Office-run

process, but something that will be supported by a joint secretariat; the agendas will be jointly agreed, and so on. Those are important changes.

I also welcome the commitments to transparency of IGR, which has been improving in recent years anyway. The regular reporting that will be done of the meetings of the interministerial groups is to be welcomed, as is the enhanced disputes resolution process. The implementation of that should be followed, and we will certainly be doing that at the Institute for Government; hopefully, the Committee will follow this as well.

There is a long list of interministerial groups that the review suggests could or should be set up. I did a quick check, and I think only four or five are currently in existence, or, at least, have met so far. There is a big question about whether the good ideas and principles in this review really will lead to change in how all the different bits of Government operate. There will be an ongoing role for Michael Gove and his team—

Q19 **Chair:** Akash, forgive me I am going to cut you off short, but we got the point that you were making. You can probably see on your screen that Members are drifting off to the main Chamber for Wales Office questions; we are barely quorate at the moment. Geraint has a very brief supplementary question.

Geraint Davies: Starting with Hugh, I wanted to ask about the new disputes resolution process and whether that can realistically be expected to solve funding problems, such as our share of HS2, coalfields or the Olympics—whatever the problems happen to be.

Chair: One-line answer, if possible.

Dr Rawlings: It has potential, but I have my doubts.

Q20 **Geraint Davies:** Philip, what do you think about the disputes resolution process?

Philip Rycroft: I agree with that. The disputes that have been through JMC process before have generally been about money; ultimately, that has to be negotiated between the Governments. It might help, but let's see.

Mr Paun: I note that annex (c) on the finance interministerial relations is still described as draft. I do not know if that is a sign that that bit, and the other annex as well, are yet to be fully agreed—or if that is just a mistake. I assume that is a sign that there is more work to be done in reaching an agreement on how that side of it is going to operate.

Geraint Davies: Hopefully it isn't a cold draught.

Q21 **Chair:** I will ask one final question; again, one-line answers if possible. Where do the review and the new proposals leave the territorial offices? Do you think there is a continuous process of withering of the role and place of territorial offices, or do they still play a key part in the plumbing of intergovernmental relations? Mr Rycroft first, please.

Philip Rycroft: I am a bit biased, as you can imagine, Chair. I think they still have a very important role. They are the eyes and ears representative

of the UK Government in Wales, Scotland and Northern Ireland, and they can represent the interests of those parts of the UK around the Cabinet table. Their structure and how they are set up and work with the rest of Whitehall does bear thinking about, though. I think we were getting there, but the UK Governance Group had a way to go on that. They remain very important as a visible demonstration of the integrity of the United Kingdom and how it hangs together.

Mr Paun: On that point, I largely agree with what Philip has said. The reality is that, when it comes to the practical business of intergovernmental relations, it has long been the case that the devolved Governments typically prefer to build relationships with the relevant line Departments in Whitehall, rather than go through the Scotland or Wales Offices as intermediaries. You would not want to overstate their role in facilitating relations, but yes, I do think they still have the function of bringing those additional perspectives to Cabinet discussions and representing the UK Government in the nations.

Dr Rawlings: It is unfortunate that we have only just got to this at the end of the session, as I take a different view. Unfortunately in my view, the Wales Office does not seem to be withering away; instead, it seems to be seeking to expand its role. I think that is unfortunate. As Akash said, from the devolved institutions' point of view, it is far better to deal with those parts of Whitehall that are actually responsible for delivering services and policy. Frankly, I find the Wales Office to be a barrier to the best possible relations between the devolved institutions and Whitehall.

Chair: Okay. Thank you very much. On that note, the bell is ringing to signal the start of questions to the Wales Office Ministers, downstairs in the main Chamber. That is an appropriate note to end on. Apologies that we did not cover all the ground that we intended to because of the unfortunate scheduling. We are really grateful for your time, experience and expertise; it is really valued, and it has been a very interesting hour. Thank you.