

Procedure Committee

Oral evidence: Procedure under Coronavirus Restrictions, HC 300

Monday 1 June 2020

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[Watch the meeting](#)

Members present: Karen Bradley (Chair); Jack Brereton; Bambos Charalambous; Sir Christopher Chope; Chris Elmore; Andrew Griffith; Anthony Mangnall; Nigel Mills; Rob Roberts; James Sunderland; Owen Thompson; Liz Twist; Suzanne Webb.

Questions 1-57

Witnesses

I: Dr John Benger, Clerk of the House of Commons, and Mark Hutton, Clerk of the Journals, House of Commons.

Written evidence:

[CVR 85](#): supplementary memorandum provided by Dr Benger (reported to the House on 24 June 2020)

Examination of witnesses

Witnesses: Dr John Benger and Mark Hutton.

- Q1 **Chair:** Thank you very much for joining the Procedure Committee today. The Committee has a number of questions, but perhaps I could kick off with the obvious one. What changes will Members notice when they return to the House tomorrow compared with both how the House felt the last time we sat, on 20 May; and, for some Members, compared with how it was before Easter?

Dr Benger: I am John Benger, the Clerk of the House of Commons. I think the changes you will notice will depend on when you were last here. It looks very different from when you were here, if you were here, before the Easter Adjournment. Seating restrictions are in place in the Chamber such that only a very limited number of Members can actually take their place in the Chamber while observing social distancing.

There is also now—some of these changes have come in during the most recent recess—a lot of signage indicating which way you need to go, with a sort of one-way system to try to control the flows of people. I suppose the other thing you will notice is a kind of walkway created in Westminster Hall for the overspill for Divisions in the new form that is envisaged.

- Q2 **Chair:** We will ask questions specifically about Divisions later, because there is a lot of interest in them, but thank you for that. Could you remind us how many Members will be able to be present in the Chamber at any one time?

Dr Benger: About 50 Members will be able to be present in the Chamber at any one time, but there is an important distinction there. There are actually 40 seats in the choir of the Chamber—in other words, seats that you can speak from. The other seats are in the galleries at the back of the Chamber, where there are no microphones, and Members cannot speak from there. However, they would obviously be able to listen from there and then in due course take their seat in the Chamber. It would be a sort of subs bench: they could come off there and take a place that has been liberated within the Chamber.

Chair: Thank you. Anthony Mangnall has some more questions about



physical proceedings in the Chamber.

- Q3 **Anthony Mangnall:** Thank you both for your time and your efforts spent on trying to make Parliament work. I am particularly concerned with making sure that Government is held accountable, so I am wondering what steps are going to be taken to ensure that bobbing will still be in place. The other thing—if I can tack on one point, because you have just mentioned it—is about spacing and the number of Members of Parliament who are able to sit in the Chamber. How quickly will we be able to change the spacing on the basis that we go from 2 metres to 1 metre at some point in the future, and how many people do we think that that will enable the House to accommodate?

Dr Bengier: On the first point—bobbing—yes, I believe so. There is an issue, which is still being ironed out, about how we control—or how the Speaker controls—more accurately those Members present in the Chamber. The Speaker—in my view, quite rightly—holds to the view that the numbers must not exceed those permitted under Public Health England guidance. Determining who is entitled to sit there at any one time is quite a challenging logistical issue, but it is well understood that the proposition from the Government is to maintain an element of spontaneity. Simply having a rigid list of Members in a straightforward sequence may not achieve that, but it is quite difficult to make that work.

On the reduction from 2 metres to 1 metre, I believe that, on the first point, it can be done very quickly. We did the marking of the seats very promptly to give us a guide to the 2 metres distancing, so I think it could be done very quickly. I am afraid that I do not have a precise answer for you on how many extra seats you would get; I would rather write to you on that. My guess is that it would be perhaps another 100, but that could be well out. One of the problems with 2 metres is that you lose the intermediate rows—you cannot have Members sitting in the row immediately behind—but I suspect that, with 1 metre, you would be able to bring those rows into play.

Chair: I think Rob Roberts has a question specifically on seating.

- Q4 **Rob Roberts:** Yes, thank you, Chair. Going back to what Dr Bengier said about only having seats in the choir, so to speak—on the sides—could we not make some kind of change to allow more people to speak from behind the Bar of the House, from the seats that are facing the Speaker, which would add a little more capacity?

Dr Bengier: That is possible, but it is probably not easy to do quickly. The sound system in the House of Commons is extraordinarily complicated. I know it looks like there is just a load of microphones dangling there and why can't we dangle a few more, but it is actually a very complicated and sophisticated system and changes to it cannot be done overnight. There is a complex digital system to make sure that only the right amount of background noise is picked up, for example, so that would not be a quick fix.



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The other thing is that, for most of the time, it should be okay. Obviously, we are not going to have 40 Members speaking all at the same time, and as long as we put in place good systems for managing the flow of people in and out of the Chamber, it will not be an insuperable problem to have a few extra people at the back. You would not get very many extra seats, and also you would be moving against the current practice of the House of where Members are permitted to speak from, and that might blur some edges. I do not know whether Mark has anything to add to that.

Mark Hutton: No, I agree with you there, John. It might be worth thinking about sightlines, too, for some of the seats—not just for the Chair, but for other Members as well—so it would be slightly less straightforward perhaps than it seems at first sight.

Chair: Thank you very much for that. Suzanne Webb wants to continue on this theme, but look at the way that procedure works in the current phase of restrictions.

- Q5 **Suzanne Webb:** You talked about being in the Chamber, having a subs bench and the need for spontaneity. How are we going to manage the people going in and out of the Chamber to ensure that we get that spontaneity? I am really keen to make sure that there is the balance of people being able to get into the Chamber as well.

Dr Bengier: Thank you, Suzanne. Some of these are challenges that the Speaker's Office is dealing with as we speak—very much as we speak. We are really working on this and my colleagues are co-operating with them. Inevitably, we will have to have some sort of list defining which Members can be in the Chamber at any one time; otherwise there is a danger that Members will just sit in a seat all day and say, "No, no, I'm staying. I'm just listening. I'm keen. I might intervene on this or that." That would not be very equitable. If you think about Prime Minister's questions, for example, you can imagine that any number of Members would want to be present, but they cannot all be there. Some sort of cast list for a particular item of business is inevitable.

A second thing that is inevitable is some type of suspension between different activities. If you have a statement on a particular topic and then you are moving on to debate the Second Reading of a Bill and you have a complete change of cast, as it were, you will need to have a brief suspension because we do not want bunching of Members at the exits and entrances of the Chamber, so that sort of thing will come into play, I think. The details are being worked out and guidance will be issued to Members.

- Q6 **Suzanne Webb:** What are the issues that the Committee should be looking at in this phase of restrictions. Where do you need assistance, and where can we help you on this?

Dr Bengier: The Committee has done a great job so far. Sorry, that is a suck up—

Suzanne Webb: We like that.



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Dr Bengier: —but I do think that the Committee has done a fantastic job, not least because you have turned reports around and given opinions so promptly at a time when we are all having to work in an incredibly agile way, like the whole country; we are in the same boat as any other organisation. You have been really responsive.

The issue around choreography is one that we may need you to look at, to be satisfied that you are happy that we are achieving the right balance between scrutiny and spontaneity, and safety and orderliness. There is a range of issues that are not just around the Standing Orders themselves. I have seen the Government's draft motion and it does address a number of the issues, but there is also a number of procedures that are not necessarily set out explicitly in the Standing Orders but that would still seem to breach social distancing requirements—for example, a Member handing a Clerk at the Table the dummy of a 10-minute rule Bill, or a Member taking the Oath. That is a very good example of close proximity handling of things and so on that would not really apply. There is a rich area there for you to investigate.

May I just put in a slightly left field suggestion, which is nothing to do with COVID-19 in itself, but everything to do with how we are operating tomorrow? It is really odd in a way that we are having to recall the House under the emergency recall procedure in the morning of the day that we were set to meet. The reason we are having to do so is that the Government need to get an endorsement for revisions to the system of Divisions, which is quite proper and correct, but they cannot change the Order Paper after the House has risen; they do not have that flexibility.

Normally the flexibility about notice is to stop an ambush—to prevent Members from being caught completely by surprise—but I do think it might be worth looking at the operation of that Standing Order to give a bit more flexibility on the day back. As you will realise, we are losing Justice questions tomorrow to accommodate that. Mark may have other views on this, but it seems to me that it would be helpful for everyone if the Government had a bit more flexibility on the first day back and we could modify orders on the first day back after a periodic Adjournment.

Chair: Thank you; that is very helpful. Suzanne, do you have another question?

Q7 **Suzanne Webb:** I just have one more question to follow up on that. Do you think we should be planning for a situation whereby we need to keep the restrictions in place after the summer recess, and thinking about how those restrictions should look? We hope that they will be lifted, but the COVID-19 situation is an ever-moving beast at the moment.

Dr Bengier: That is a fair question. One of the decisions that I have to make as accounting officer is about funding various things. This stuff is not free, and some of the steps we took to bring about the hybrid Parliament obviously had a price tag attached to them. Now, as you will know, the Lords is carrying on, in a far more virtual form, so a lot of those things remain in place. My view is that we have to be able to allow Parliament to



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operate in all conceivable circumstances, so we need to be planning for a range of scenarios, which is exactly what we are doing.

The work divides into two major areas. There is the public health area, which is about making this workplace as safe as we can possibly make it, and then there is the procedural and Chamber side of it, which involves a seemingly fast-changing situation, to which we have to be prepared to react. In both of those areas, I am extremely proud of the efforts of my colleagues, the House staff generally, Digital staff and so on to achieve those aims.

- Q8 **Chair:** I think we can all agree that the work of the House staff and the digital team has been phenomenal in achieving what they have, enabling us to continue to operate under these most testing conditions. If I can press you on the point you made about suspension, one big criticism of the virtual system is the number of suspensions required, and therefore the amount of business and time in the Chamber that is lost due to the fact that we have to close the House down and wait. What is your view on how frequently that is likely to be the case with this new system, and how long is that suspension likely to need to be?

Dr Bengier: I think the last point is the important one. It will be a much shorter suspension than we needed under the previous arrangement, because a lot of the basis for those suspensions was to allow the broadcasters enough time to get the next lot of Members on the call. It is not that part of it that we need to retain; it is simply the incoming and outgoing Members and staff and occupants of the Chair and so on. I do not want to get in the way of the Speaker's call, because this is the occupant of the Chair's call, but I think we might get away with three-minute suspensions, rather than 15 minutes or the initial 30 minutes that we had under hybrid. They will be much shorter, but I think there will still be a few a day—every time we switch the cast list; that is the way to think about it.

If the changes are very modest, with different Members in for topical questions than for substantive questions, as long as Members leave the Chamber in an orderly way, the next lot of Members can come in. It may well be that there will be various items of business for which we do not need to suspend at all, so long as we can be confident that we can manage the numbers. Ultimately, the public health concerns are very real. I know that the Speaker puts the highest priority on those and will not jeopardise those.

- Q9 **Chair:** And there will be no need for cleaning the Chamber between the different sittings, while we have these suspensions?

Dr Bengier: No, that is not the case.

- Q10 **Sir Christopher Chope:** Has the advice from Public Health England been published and made available, so that Members can see the basis upon which judgments are being made?



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Dr Bengier: There has been a lot of advice, but quite a lot of it has been *in situ* on-site visits. The Speaker's letter to Members summarised the very short written advice from Public Health England. That key advice about the narrowness of the Division Lobbies and the need to avoid the presence of Division Clerks is taken pretty well word for word from their written advice. I'd have to come back to you on other written advice. I do not believe that it has been published, but it has involved extensive consultation with the team of officials who have been asked to oversee Public Health England guidance being followed, which is a serious concern for me as corporate officer, as it is for the Speaker.

There have also been oral briefings. Public Health England have made quite a high number of site visits to Parliament—they have not been doing all this from behind a desk somewhere—involving senior PHE officials coming to the House and briefing the Speaker and other colleagues.

- Q11 **Sir Christopher Chope:** But it is only advice, rather than being prescriptive. My view about health and safety is that it is goal setting, rather than prescriptive, when it is at its best. Public Health England is not God, although we may sometimes think it is. To what extent will the House have the opportunity to make its own independent regulatory impact assessment, particularly of the difference between 1 metre and 2 metres social distancing rules?

Dr Bengier: I would quite like Mark to come in on this. I can begin by saying that the House can, of course, determine its own destiny. It is a fundamental principle that the House is responsible for its own conduct and affairs. I do not think legal risk is absent in this area. If we were operating an unsafe workplace, it is not the case—I believe; Mark may have a different view on this and I would be interested in his view—that we can just sit outside the law and jeopardise the health and safety not just of Members, but of the very many staff who have to be here to support those Members. Mark might want to come in on that exclusive cognisance point, on which he is a great expert.

Mark Hutton: Thank you, John. As an organisation, the House has said that, whether or not it is formally bound by various forms of statute law—health and safety being one of those forms of statute law—it is none the less committed to abiding by it. The first point to make is that the House would not wish to depart from what is perceived to be the guidance that the rest of the country is being advised to follow. It would be very difficult for a legal case to be taken against the way the House organised its proceedings and the way in which it did its parliamentary business, but that is not to say that the consequences of those decisions for other activities on and around the estate, including quite close to the Chamber, would not possibly, potentially, be susceptible to some form of legal challenge. The protection for proceedings is quite specifically for the parliamentary proceedings themselves, rather than for the activities across the estate as a whole.

- Q12 **Sir Christopher Chope:** But all health and safety advice is subject to the rule that it should be as far as reasonably practicable. We know that the



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2 metres rule is adopted by Public Health England on a more precautionary approach than the World Health Organisation and a lot of other countries. Surely it is not outlawed that we can look at this and see whether, in our particular circumstances, something less than a 2 metres rule, subject to other safeguards, would be appropriate—for example, in connection with people queuing up for Divisions?

Dr Bengier: I think you are trying to lure us into quite treacherous territory there. There is the general issue about whether 2 metres or 1 metre is appropriate, and my understanding—of course, the scientists understand this a lot better—is that proximity is also linked to the amount of time spent in that proximity. A number of the countries that operate the 1 metre rule do so on the assumption that it is not for very sustained periods, which it seems to me would not necessarily work terribly well in the Chamber. It would be a slightly curious situation if the House of Commons said, “Well, the rest of the country can use this guidance that we have promulgated extremely widely, but for our own particular circumstances, we think that 1 metre is fine.” Personally, I think that would be a hard argument to sustain. The Speaker has made it clear that he expects the House to operate absolutely strictly within the guidance set by Public Health England, so he would be the first person you would need to persuade.

Sir Christopher Chope: Obviously I take your point about the length of time in different circumstances that people are close to each other in relation to the Chamber, but if we are talking about people queuing for a Division, that is not a long and sustained period—or it should not be. It does not have to be.

Q13 **Chair:** Chris, we are going to have questions specifically on the Divisions later, so perhaps we can address that issue then. I had understood that 2 metres for 15 minutes was the general rule of thumb, so if you are within 2 metres of someone for 15 minutes or more, the risk is higher. Is that correct, Dr Bengier?

Dr Bengier: I think you have the advantage on me on that, Karen. We are confident that, with the ventilation in the Chamber, Members can stay in their seats on the basis that we have marked for them. Public Health England has confirmed that those arrangements are appropriate. I am a bit nervous about getting into WHO guidelines and how they would impact on the Chamber under a different approach.

Q14 **Jack Brereton:** I want to focus a bit more on the advice that you are receiving from Public Health England and the actions that you have been taking, particularly around the wider estate, with more people coming on to the estate this week. Are there areas that will be excluded from access because social distancing cannot be implemented in those locations, or are there measures that you have been introducing to make sure social distancing is being followed throughout the wider estate?

Dr Bengier: Our aim has been to make the estate as functional as possible and to work as well as it can. There are some limitations. We do not have as many entrances open as we would do if we were having large numbers



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of members of the public here, for example. That reduces the number of our staff that we have to have on site, as you need quite a lot of staff to keep the individual entrances open. The sorts of entrances that Members would typically use are open.

If we look at some of the catering arrangements, we have obviously had to alter the offering, the seating arrangements and so on, and those do look very different. If you go to Portcullis House, the seats are all spaced far apart.

As I have mentioned, in the Chamber individual rows of seats have been taken out. It is much more of a controlled flow. There are a lot of signs. There are a lot of roundels on carpets showing what a 2-metre gap is, or there is advice on how to keep those 2-metre gaps in place. We are doing our very best, with all the restrictions that this amazing Gothic building has—with lots of corridors and doorways, entrances and different levels—to keep people just as safe as we can, and a huge amount of effort has gone into signage and making routes work in a particular way.

- Q15 Jack Brereton:** Particular concerns have been raised about some of the toilet facilities and some of the office spaces within the Palace, which are very confined. Have actions been taken to address some of those issues?

Dr Bengier: Yes. Office spaces were specifically looked at by Public Health England, and, in addition, a large number of sanitisers are now dotted around the estate. I can ask Marianne Cwynarski, who chairs our COVID-19 planning group, which deals more with the public health measures, to drop you a note on that, Chair, just to give you chapter and verse. She is probably the best person to answer the specifics.

If you look at things such as passageways and stairs, they are being identified as one-way. We are looking at particular Committee Rooms as being more appropriate for Public Bill Committees. There are a couple of really big rooms, which will allow Public Bill Committees to operate in a physical mode and still maintain social distancing.

- Q16 Chris Elmore:** Dr Bengier and Mr Hutton, good afternoon. I just want to say on the record, although I am sure I have said this previously, thank you very much to both of you and all your respective teams for all the work you have done. Due to other responsibilities in the House, I have had reason to be in the House for nearly every one of the hybrid sessions, and it has been quite extraordinary to see how much the House has done and the commitment that the staff have shown, right across the estate. It is welcomed by every Member, I am sure.

Can I just press you a little further? Sir Christopher asked about the rules of the House and the laws set by the House and whether we are to abide by them. Following that, can I ask, particularly in relation to House staff, about what would happen were we to rescind the 1-metre rule, for example, or were we to try to rush through a Lobby? I agree with the Chair on the 15-minute 2-metre radius, and there is also the stream in which public health officials of all the nations of the UK have raised concerns about airflow, particularly if we are indoors. Can I ask about



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culpability? If someone was to be ill or, in a tragic and extreme case, was to lose their life, what is the responsibility of the House—Members, the Speaker, yourself as Clerk, and senior Clerks? We need to make clear the direct responsibilities of everybody working in the House, from the Speaker down, and our responsibility to the staff who work in the kitchens and canteens, and our cleaners. No one is worth more than anybody else—I'm sure you would agree with that. It would be good to understand that.

Dr Bengier: That is a really good point, and I have obviously taken advice on it. My understanding is that there would be legal risk. If we were found to have endangered people by ignoring appropriate guidance and best practice, there is legal risk. That concentrates my mind because, I am afraid, the legal risk falls on me, not the Speaker. It is me, as the corporate officer, who would be, as it were, in the dock answering this. I have had clear legal advice that, if we were negligent, we would be at legal risk, and it would be down to me to defend our position.

Q17 **Andrew Griffith:** Hello, Dr Bengier. Thank you for everything that you have done. The whole Committee recognises the unprecedented nature of everything you have put in place. Some of my questions have been answered, so I have only one. I will ask you to put your creative hat on. One of the challenges of the hybrid arrangements—the limited hours and the call lists—has been just how disenfranchising they are.

This is not a personal point, but I want to use an anecdote to make it real. I represent a very agricultural constituency, and I was not able to make a contribution to the very important Agriculture Bill, in the way I was elected to do by my constituents, as a combination of the shorter sitting hours and the call lists. Had those not been in place, I am reasonably confident that, by virtue of my presence in the Chamber, I would have been able to intervene or catch the Speaker's eye. As we go into the next phase, what can one do to try to address that issue?

Dr Bengier: That is a very fair point, and it is one of the trickiest areas to resolve. It all comes back to the issue of who can be in the Chamber at any one time. You mentioned interventions. In a long ministerial speech for Second Reading or something like that, there may be a large number of interventions, some of which may come from Members who then do not look to speak in the debate itself, so you can get a lot more Members covered. One of the challenges—this is ultimately for the Speaker's Office to determine—is what you do about that, and how that is consistent with having a finite number of Members in the Chamber.

One of the things that Members will have to get used to is making their contribution and then leaving. That is an unusual situation. Many of those things are the opposite of what the Chair would normally exhort Members to do and of the typical conventions and courtesies. You stay for the next two speeches, and you make sure you are there for the opening speech and the winding-up speeches. We might want you to do the opposite of some of those things. The aim will be, I am sure, to maximise the

participation of Members in a way that is consistent with keeping a safe number of Members in the Chamber.

You have touched on a very knotty problem. I know that the Speaker's Office is working hard to resolve it and issue guidance. It may well be that we do what we ended up doing to some extent with the hybrid Parliament. We may not get this right straightaway. This is a very dynamic, fast-evolving situation. We will do our best, and the Speaker's Office will do its best, to make it work from the get-go—from day one, from this week—but we may very well need to tweak it in the light of experience.

Chair: Andrew, did you have a follow-up?

Andrew Griffith: No, thank you. That is very fair, Dr Benger.

Chair: What we have seen coming out of various Whips Offices over the course of the day is that there is still a requirement for urgent questions and statements to be tabled sooner than would be normal under normal sitting arrangements. You also still need to put your name forward to be called as part of a Speaker's list, even under the physical proposals that start tomorrow. But as you say, Dr Benger, it may well be that these things are refined as we get used to this whole new world we are operating in.

Q18 **Owen Thompson:** May I start by adding my thanks to Dr Benger and the team for making sure that I and my colleagues were able to take part in parliamentary proceedings and were not disenfranchised? In fact, through electronic participation we were able to continue to have a voice during the period when the hybrid sittings operated.

Looking forward, there will be issues about the number of Members in the Chamber. What powers does the Speaker have to stop effective seat blocking? How would the Speaker go about removing a Member? What powers does he have to do that? Will there be some priority process or protocol around who should and should not be in the Chamber at any time?

Dr Benger: I think your Committee has helpfully given a lead on this in your report—I just read it—where you say that you think the Speaker would be entitled to use the powers he has to cause Members who were in the way, as it were, for this purpose, to leave the Chamber. The Speaker has extensive powers under the Standing Orders to require, if necessary, Members to exit the Chamber, and your Committee has given a clear steer that you think that would be appropriate.

In terms of priority, there may be some delicate questions. The Speaker's Office is, of course, constantly judging questions of priority in creating a Speaker's list for a debate, for example, and in determining who is called in an urgent question or statement when far more Members want to participate than can be accommodated, irrespective of social distancing norms. The current Speaker has tried to give much more certainty and predictability about the length of time that statements and urgent questions will take. So there are these judgment calls that occupants of



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the Chair have always had; they have just got this extra nuance that, for safety reasons, we cannot exceed the number in these circumstances.

Chair: Can I now bring in Chris Elmore? We are moving on to how staffing arrangements in the House will work.

- Q19 **Chris Elmore:** On a practical basis, how many staff do you expect to be present on the estate, on the assumption that all Members could return tomorrow? I understand a limited number of staff were present while Member numbers were down to 50 to 70, but clearly that cannot be the case after tomorrow.

Dr Bengier: I will put this into perspective so that you know what the difference is between now and before Whit. I thought you might be interested in this area, so I had someone do some analysis. Just before Whit, we had about 380 Commons and PDS staff here, as well as 130 Met officers, about 40 people from the Estates team, and roughly another 100 people, which gave a total of 670 staff. Under those categories, the total Commons and PDS staff will rise to 570, the Met staff will rise to 175, the Estates staff will rise to 200, and the mysterious others category, about which I am not quite clear—sorry—will rise to 120. That gives an overall rise from 670 before Whitsun to about 1,065 staff of various types. That is still well below our overall staff complement.

The majority of our staff will remain working at home if they possibly can, and our instructions to them are to do that. We do not need presenteeism here. The people we need here are the people who have to be here for various functions. The general advice other than that is: "Please work from home if you can." That has been happening very successfully for those teams that can do it. It does exclude some teams. Visitor assistants is a category that springs to mind. We are not doing visitor tours at the moment, so we are obviously not requiring them to be there. But, for example, your Committee support staff, members of the procedural offices, Library researchers and so on are all working very well. The Digital team are all working very well.

Sorry, I should have mentioned in an earlier answer that some of those offices, such as the Table Office, are not open and will be working remotely. The Library will physically be open, but there will not be Library staff in the Library. That is the same arrangement as we had from Easter. Nothing has changed, but I should have included that in the areas that are not open. There is a significant increase, but none the less the majority of our staff are not on the estate.

- Q20 **Chris Elmore:** I am not expecting the Clerk to comment, Chair, but it is interesting that he is telling all staff to follow UK, Scottish, Welsh and Northern Ireland Government advice to work from home if they possibly can. If only there were a hybrid model for Members to work from home. Wouldn't that be revolutionary?

In terms of those additional staff, Dr Bengier, do you think that there will be an increase in staff if there is a late sitting of the House—for example, with much longer Divisions? There was clearly considerable joint working



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between the usual channels and the smaller parties, while we were having hybrid proceedings, on limited Divisions, before electronic Divisions were started. If there are now, say, two or three Divisions, which would normally take 14 minutes a Division, plus an occasional delay—no more than about 45 minutes for three Divisions—it could now be running into hours for a Division. That puts additional pressure on staffing, with all the complexities that go with that.

Also, do you see any difference, based on what is actually taking place, for business in the Chamber? If you are debating Bills, do you need more Clerks to be present, et cetera? Does the practical management of what is being debated add to pressure on staff?

I have one final question. If we are to have an increasing number of Members—if pairing were to be reduced, for example—does that create additional pressure in terms of having more staff come on to the Estate, depending on how many Members are actually coming in? I appreciate that you will have been working with all Whips Offices on that to get a rough idea of numbers, but as time goes on will there be any additional pressures?

Dr Benger: I will take the last point first. We do not have enough certainty yet to do a very refined calculation. We will see how it goes, basically. I am not expecting the numbers I have given you to change significantly though. If we have, say, 450 Members, not 400 or 350, I do not think it makes a big difference.

To answer your first question, yes, we do need more staff if the House sits longer. I cannot give you a precise figure, because it is quite a complicated equation, as some of our staff work on shift systems, such as the security staff and the catering staff. *Hansard* operates on rotas and so on. It may make quite a big difference if it is hours and hours longer.

I do not think that the complexity of the business or the range of business makes much difference within the Chamber. I think the impacts there are felt more in things like Public Bill Committees. There are some capacity constraints there depending on the number of Bills that the Government are intending to have in Committee at any one time, and the number of Delegated Legislation Committees. The shoe pinches a lot more there, and as you will know, there are some relatively modest constraints now on Select Committees' operation.

One of the things happening there, which may well be replicated in Public Bill Committees, is that Committees may have to be more flexible about their time of sitting. Although I am fairly confident that we can manage the number of Public Bill Committees, General Committees, Delegated Legislation Committees or whatever that the House would normally expect to operate in any one period, we may have to ask for more flexibility on the days on which Committees sit, and that sort of thing. I hope that answers your question.

Chris Elmore: Thank you. That was very helpful.



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- Q21 Owen Thompson:** Moving on from the number of staff, have you got a working assumption of the number of Members you are expecting to see on site each day?

Dr Bengier: We have heard this figure of 400, which I think is in your report, but I have not got any definite numbers, I am afraid, and I do not think we will until it starts.

- Q22 Owen Thompson:** Okay, so you are not necessarily able to break that down, but would the number of Members on site reduce or increase the demand for staff to attend in person?

Dr Bengier: It does make some difference, yes. The more Members you have, the more catering staff, particularly, we need, if we are turning round those facilities. Quite helpfully, the injunction has gone out that Members should not bring their own staff on to the premises; that would have a very significant impact, if there were large numbers of Members' staff operating here as well. But I do not think that there is an enormous difference. Again, I can ask Marianne Cwynarski from the COVID planning group to give you a breakdown of that—what is the difference between 300 Members and 500 Members?—if that would be helpful. I think we can come back with a follow-up note on that.

- Q23 Owen Thompson:** Just on some of the practicalities of particular sessions—I am thinking of Scotland questions and Welsh questions—there is likely to be a significant number of my colleagues on the Order Paper at Scottish questions, or I certainly hope there would be, which perhaps presents a challenge in terms of the number of Members able to be in one particular part of the Chamber. How do you expect that to be managed?

Dr Bengier: Through common sense and everyone behaving in a grown-up way. The conventions operate that Members typically sit in a particular area. But I think it would be understood—this is probably the sort of thing that the usual channels would be the best way of getting, one would hope, agreement on—that there are only those seats in the Chamber. I think it would be understood—I hope it would be understood—that priority needs to be given to the Members on the Order Paper, and, ultimately, the Speaker, I am sure, would call on Members to behave in a sensible way and to make practical concessions to allow that to happen.

- Q24 Liz Twist:** I want to ask more about staffing issues. What are the areas of Chamber and Committee activity that are particularly staff-intensive, and what increases the demand for staff to come in? What are the key drivers?

Dr Bengier: There are some very specialised roles that cause me concern—some of them cause me potentially more concern with the hybrid model, actually. Our Broadcasting team is not enormous, and they have obviously been under immense pressure.

Sorry, I should say that there are a number of our staff who, following Government guidance, should not be here and need to be at home—they are in vulnerable categories. So we are not operating with a completely



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full complement as it is, and there is additional pressure on our resources.

There are complicated areas around legislation, which require very specialist skills and interaction with Members on the drafting of amendments. But on the whole, I do not think that there are particular hotspots. It is a more general thing really. We are concerned around Bill Committees and the general capacity to deal with General Committees, and indeed, with Select Committees, but with Select Committees the picture is fairly settled now, so we are coping with that quite well. The areas of primary and secondary legislation are where we are in a stage of development where we are trying to do our best to maximise the capacity, but there are pressures.

Q25 Liz Twist: What sort of feedback have you had about online-only support for Members from the House Service?

Dr Bengier: We have had very positive feedback about how the virtual side of the hybrid offering has worked. An enormous amount of work has been done by some very hard-pressed individuals to achieve that. I think that many of you—like me—have had a crash course in operating in various interesting technologies. We never expected to do that or to be taken up that learning curve as quickly as we have. I am told that there is one parliamentarian—I definitely won't name names; don't worry—who used a computer for the first time during this process, which is surprising. Many of us are operating differently: the Digital Service, the Broadcasting team and the contractors working with them have done a superb job in getting people up to speed, which we have to acknowledge, and I certainly know that, as Members, you are under enormous pressure as well, like many people in the country. I am well aware that your postbags—your email postbags and your physical postbags—are huge, and that you have numerous competing pressures on you.

I think it has been a challenge for all of us to work around the new system, but necessity is the mother of invention. If we look at remote Divisions, for example, I think that many people were sceptical—I freely admit that I was a bit sceptical and I have a high regard for the people in the Digital team who were working on that—that we would be able to deliver remote voting as quickly and as smoothly as we did. I remember when we were doing the early tests and the first test came through, we had some very mixed results and I thought, "Blimey, this isn't looking great," but it all worked, so we owe a debt to that team and the other teams that I have mentioned. Members have, on the whole, been very understanding of the need to work in a different way. I think it has been a very good relationship from all the feedback that I have had.

Liz Twist: Can I finish by adding my thanks to the staff? It has been a great effort and a great learning curve for all of them and us.

Q26 Chair: Thanks, Liz—I think we all agree with that. Before we go on to the issue of Divisions, which I suspect will be one of great concern for many Members, what provisions do you have in place if test and trace identifies that someone in Parliament has tested positive for COVID-19, and how would you manage staffing arrangements at that point?



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Dr Bengier: That is a really good question, and I do not have a comprehensive answer. Again, Marianne Cwynarski, who leads on our public health measures, is a better person to ask. It does concern me, obviously. To give you one very clear example, the occupants of the Chair—the Speaker and Deputy Speakers—work closely together and the House invests a lot in them. Let us just hypothesise that they have been sufficiently near a contact to come up in this test and trace regime and are all told that they need to stay away. I can envisage circumstances where this will present challenges to us.

We have a lot of resilience within the organisation in terms of some key areas, such as security and digital, and even within some of the core procedural areas. The principle that that part of the House Service operates—for example, Clerks circulating between different offices—is very helpful from that continuity perspective. We can find Clerks who have hitherto worked in the Public Bill Office and ask them to go back and work there, and so on and so forth. I think we have a certain amount of resilience, but a question that lots of organisations will be facing is, “Will this significantly impact on our overall numbers?” Until I see that in action, I am not sure that I can give you a very definitive judgment on how it will affect things.

Chair: I think there is concern about how many Members will be able to attend the Chamber if we ended up with a test and trace positive. That is probably something for us and the Whips to worry about rather than you. We will now move on to questions on Divisions, and I will bring Chris Elmore back in.

Q27 **Chris Elmore:** Obviously, a new procedure for Divisions is being tested, with a long queue forming into Westminster Hall, up the Members’ Staircase and so on. In terms of how that will work, is there anything that you think Members should be made aware of before that process starts—obviously, it will start tomorrow—and will Members be talked through it?

As Divisions take place, both of you will be aware of Members tending to wait once they have voted, and you will often hear Whips asking for the Lobbies to be cleared, because Members congregate. Under the new system, they will walk past the Speaker’s Chair. What is the process then for dispersing Members beyond that, trying to ensure that Doorkeepers, other House staff and Members are not put at risk, by having a correct way to flow out of that end of the Chamber and towards the Table Office?

On times of debate, if we were to have a knife or protected time during a debate, say for three hours, would the second three hours be cut if there were two Divisions, losing 30 minutes? If a Division was for 40 minutes—I understand that the Speaker has an option of extending a Division if there is a problem getting all Members through within the set timeframe of 28 or 44 or whatever it might be. Is there any provision with the Standing Orders to extend the next debate, to fit in with the programme motion that may have been voted on earlier in the day? If there is not, could any thought be given to it? You could find that Third Readings, or



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even Report stages or Committees of the whole House, could be considerably shorter if we have to have two or three Divisions lasting more than 40 minutes.

Dr Bengier: There is quite a bit to unpack there.

Chris Elmore: Sorry, Dr Bengier. I was trying to cover it in one go.

Dr Bengier: That is very kind. On the first point, about guidance, we are going to circulate guidance. There will be written guidance available to Members. It is probably best for me to say that that is in hand and will be comprehensive. The main thing to say—the Whips will probably help with this—is that there will be quite a long time for Divisions. I do not think it will be hours; I think half an hour is a more realistic guess of how long it will take. Members do not need to form an enormous scrum on the basis that they will be missed out. They will not. We are hoping that good sense will prevail, and people will say, “I’ll leave it 10 minutes and then I’ll make my way”, because otherwise they might be queuing for a lot longer.

In terms of where they will go, I think the exit goes straight out down the corridors at the end—they will go out through the back of the Chamber and will be asked to leave and not huddle. If there are successive Divisions, my understanding is that there will be a suspension of around five minutes, so that Members are not confused—apart from anything else—about which Division they are actually on, but also to discourage and deter people from loitering, thinking, “There is another Division coming up.” There will be a definite break.

In terms of the operation of programme orders—Mark will have a view on this; I might bring him in sooner rather than later—the House will have determined the programme order it is working to. It will be up to the Government, in proposing that motion, what knives it will insert or what internal knives it thinks appropriate. The House will have to come to a judgment based on that. As you know, even currently, all sorts of debating time gets lost if there are successive Divisions under a knife. I do not know whether Mark wants to come in on any possible flexibility that could be built in.

Mark Hutton: Only to say that flexibility could be built into the drafting of a programme motion. It is quite possible to draft a programme motion that discounts the time taken by Divisions. However, as John says, programme motions are tabled by the Government and are drafted within Government, and in the end it will be a matter for them to decide whether to make that provision, and for the House to then agree to it or not.

Chair: Thank you. Chris, did you want to come back?

Q28 **Chris Elmore:** I have two points in response to Mark’s answer. Obviously, the Government take advice from Clerks of the House, and I wonder whether that conversation has taken place. I am sure it has been raised by Opposition Whips and the third party, because it is something that has to work practically.



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My final point—I know that Mr Sunderland wants to come in on something—is about whether there could be a dual voting system. Has any thought been given to that?

Dr Bengier: I will answer that one first. On the first point, the relevant officials will be talking to the relevant Government officials. There are quite frequent conversations between, say, the Public Bill Office and the Table Office about the content of motions and the operation of programme motions, but ultimately it is up to the Government what they table, and we only give technical advice.

In terms of whether you could, as it were, blend a physical Division with a virtual Division, the short answer is, yes, you can. Work has been done on the software side to ensure that that can happen, at least on a theoretical basis. You could take the names of Members voting remotely and add them to Members voting physically. The difficulty, however, which is not insuperable, is that under the form of Division that you will be seeing, one assumes, tomorrow—the long march through—it all happens too quickly for Division Clerks to record the names in real time. We get the numbers in real time, and they will be declared by the tellers at the end of the Division, and it is that result that counts. That has always been the case. The names that the Clerks write down are for a few purposes: for the *Hansard* record, and for the purposes of English votes for English laws—the Government are proposing to suspend that, so it is not an issue.

If a hybrid voting system were agreed on, it would be possible to get a result and a number, but not possible to have an immediate list of names. There would be additional issues around authentication and stopping Members voting twice—pinging in a virtual vote and then trotting through the Chamber to have a second vote. Of course, that would be an abuse, and one would imagine that the Chair would take a very dim view of any Member deliberately doing that, but we would need to think about what safeguards could be built into it. The short answer is that the technology should make that possible.

Mark Hutton: I would just add that that sort of double voting would not just be an abuse; it would be a very serious contempt, and I imagine the House would take it very seriously if a Member did that.

Chair: I hope we are all honourable Members in this case.

Q29 **James Sunderland:** Good afternoon, John. Thank you for coming and speaking to us this afternoon. I think my question has been answered. It is about the ongoing utility of the technology for remoting voting, and in particular proxy voting. I am of the view that the House needs to modernise. Frankly, I am appalled when I hear stories about people with cancer and brain tumours being wheeled through the voting Lobbies. We can do better than that. I wanted your view about whether it would be possible to roll out the technology but perhaps allocate it only to those who have been given a proxy vote.

Dr Bengier: I think that is a really fair question, and I know that your Committee is looking more widely at proxy voting. The short answer is



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that anything is possible. I am sure we could use technology to limit the number of Members who could vote by that remote system. That is doable. There is a decision, which you will perhaps advise on as a Committee when you look at a proxy voting, about the basis on which you determine which Members would reasonably be eligible for that vote. There are various ways you can do that. If you look at the current arrangements for proxy voting, they are very specific: there are three categories, including fathers or mothers—the other parent, as it were—the adoptive one and then the birth parent. There are clearly defined sets of people who are eligible for a proxy vote. In the past, we have looked at whether you could extend that to people who are seriously ill. You then get into the issue of caring responsibilities and whether that is a valid reason, and so on. There is a range of different principles that you could operate on, and that other Parliaments do operate on, but ultimately someone must produce criteria that can then be applied.

Chair: Thank you very much. Can I bring in Bambos Charalambous? I know he had a question on Divisions.

- Q30 **Bambos Charalambous:** Hi John. My first question was about the challenges that will be faced with this new way of voting and the new Divisions. What challenges will there be for staff and for Members, and what should Members be aware of? Obviously, it will be very different, but what do we need to be aware of in order to make it go as smoothly as possible?

Dr Bengier: I think the challenges for staff are primarily about how we monitor the line and help to make the queue work, which will be a pressure for Doorkeepers, for example. There will also be the challenge of recording the names, because, as I mentioned earlier, we cannot do that in real time in the way that we do with a conventional Division using Division Lobbies. We would need to reconstruct that using the audiovisual record of the Division. We think that is perfectly manageable, but it will not be particularly quick. It might mean that, for example, the Whips Office and the media have the names of the Members, because they can watch it and they will be able to write them down, but the written list will not be available for a couple of hours.

- Q31 **Bambos Charalambous:** On that point, I was in when we did the experiment a couple of weeks ago, and there were members of staff with laptops; I think they were recording who had voted. Obviously, the Division Clerks have their iPads and they are marking people off. My understanding was that people would call out their name and how they were going to vote. Will that not be the case?

Dr Bengier: That's right; they will, but we have tried this with our highly trained Division Clerks, who are the people who do this normally, and the pace is much quicker. If you are in the traditional Division Lobbies, you have your chunk of the alphabet, or your one third of the Members, so all the Members coming are in a very narrow field and you are expecting them and predicting them. The more experienced Division Clerks are familiar with a number of the faces, so they can do it a lot quicker. When



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we tried, and we did try, to record them in real time as Members went through, we found that we could not keep up with it. It just isn't possible.

In terms of guidance to Members, there are a couple of things. Social distancing is what it is. Members are naturally gregarious characters who like a chat, and one of the standard defences of the conventional Division is the opportunity to buttonhole that Minister and grab them, because they cannot escape. They are required to be there and you know when they are going to be there, so you are lying in wait for them. That may not be consistent with best practice on social distancing. Yelling something further up the queue might not work very well either. That will be one challenge.

The other challenge is the one I mentioned: it would be helpful if people joined the queue gradually and accepted that this will take a little bit of time, and not all crowd around in a great big huddle. The other thing is that you keep to the 2 metres, because we will not be able to mark it out everywhere. The flagstones of Westminster Hall are part of a very precious world heritage site, and we have to be quite careful with what we do to those. We will expect Members to apply common sense in the operation of the procedure.

Chair: Thank you. We will now move onto questions about virtual participation, and I will bring in Liz Twist.

Q32 **Liz Twist:** Thank you, Chair. What authority would be required for the House to continue to allow virtual participation?

Dr Bengier: It is still permitted in Select Committees, because the Speaker has discretion in extending that, but the short answer is that the House went into virtual participation with a particular authority that it gave itself with the temporary orders that were passed in April, and it would need to replicate them to go back into it. Those orders have lapsed, so the House would have to put them back in place.

Q33 **Liz Twist:** Could virtual participation be continued even after the resolution of 21 April is rescinded?

Dr Bengier: As things stand, only in terms of the specific dispensation given to Committees. I do not know whether Mark wants to add anything on that, but that is my understanding.

Mark Hutton: I would agree with that. Theoretically, until such time as the House rescinds a resolution, which the Government are proposing that the House should do tomorrow, that resolution and its permissiveness around virtual proceedings still stands. Once that is gone, the assumption must be that the House, other than expressly provided for Select Committees, is operating in the way in which it would otherwise traditionally have operated.

Q34 **Liz Twist:** Okay. Just to be absolutely clear, if there were a wish for any kind of virtual participation, there would need to be some resolution of the House—presumably tomorrow or at a later date?



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Mark Hutton: Or an order. The House can authorise it in the same way that it did for Committees. It just needs an explicit authorisation.

- Q35 **Liz Twist:** Okay, but it does need to be explicit. Moving on to technical capacity, does the House have the technical capacity to allow virtual participation in proceedings by Members during the course of all debates? Could it be done without interrupting the procedural flow of the Chamber?

Dr Bengier: I don't think you can have everything. I do not think that you can have spontaneity—people coming in whenever they feel like it—and full virtual participation. In a sense, we had consensus for a while, if you like, about one very specific type of hybrid proceeding. It would certainly be possible to modify that in particular ways to allow virtual participation in legislative proceedings or debates and so on. It could be done, but it might look a bit different. It might have to be done in a different way. For example, you might put all the virtual contributions in a block rather than toggling between physical and virtual. That would certainly relieve some of the pressure on the Broadcasting team. In terms of whether we have overall capacity, touch wood, I believe that we do have the capacity to return to elements of virtual proceedings if that is what the House chose to do. It must be acknowledged that the Lords are putting more demands on finite resources now than was the case before. They are expanding their offering, but we are working hard—this is following on from an earlier answer that I gave—to ensure that, whatever the House decides, we as a House Service can support that decision.

- Q36 **Liz Twist:** To summarise, it would be possible, but it would have to be different from the normal taking it in turns to speak. It would need to be protected time.

Dr Bengier: That is just a possibility. There are lots of different ways you could do it. One of my earlier answers will also indicate that what we have now is not normal. Do you know what I mean? Even the physical proceedings are not identical at all—and cannot be—to the physical proceedings that we had pre-COVID-19.

- Q37 **Liz Twist:** Finally, what scope is there to add British Sign Language interpretation to virtual participation? This has been raised by a number of organisations such as those representing people with hearing loss.

Dr Bengier: We are very supportive of that approach. You will have seen that we trialled it a few times in the Chamber, and we are optimistic that we can bring it back very soon for Prime Minister's questions, which is what there is most pressure for coming from the various organisations; it is top of their list. I think we are almost there. I do not want to give a promise which I cannot absolutely back up, but I am pretty confident that we are very close to being able to deliver that now on a more routine basis, not an ad hoc basis, as it were.

- Q38 **Chair:** If I understand this right, you could have a block of time during the day where those who wish to participate virtually could do so. It would not then need the big reset and suspension of the House; you could bring that in during, say, a Second Reading debate or Opposition



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day debate and allow some virtual participation without affecting the flow of proceedings too much.

Dr Bengier: Yes. I think in your report you accept that the principle of absolute parity, which is what prevailed before, might not be the way forward. But there is a grey area. There are lots of different ways you could do it. I think it would be easier, to reduce the number of suspensions and limit the amount of time taken to prepare, to have, let us say, a discrete block of virtually participating Members somewhere in the middle of proceedings—probably not right at the end, oddly enough. That would allow more flow while preserving the cut and thrust in debate.

I do not think it would be terribly easy to allow spontaneous interventions from Members participating virtually; that would be very challenging. I think that would have to be retained within the physical setting. But there are lots of different ways you could do it. I am only suggesting that, if you wanted to advocate that, that is one way in which it could be done. But I should stress that I am obviously not passing any judgment on whether or not that is desirable.

Chair: Understood. I will bring in Rob Roberts, who is going to ask some more questions about the hybrid Parliament, followed by Jack Brereton and Owen Thompson. I think Liz will then ask something about Public Bill Committees.

Q39 **Rob Roberts:** One of the downsides of coming close to the end is that people steal your questions along the way, which get half-answered. It will be okay.

The operating model for the hybrid Parliament rested on lots of temporary orders that constrained physical and virtual participation. Some might say it was the best of both worlds, some might say the worst of both worlds—I could not possibly comment—but it was all based around that parity of treatment principle. How much flexibility would be possible if that principle of strict parity was dropped, while the hybrid model continued? Given that he is the editor of the latest edition of “Erskine May” and this is a procedural issue, let’s start with Mr Hutton and see how we go.

Dr Bengier: Mark, do you want to start on the “Erskine May” point, as one of its co-editors?

Mark Hutton: When you say it is a procedural point, do you mean that there is a question about whether, in terms of the institution and its procedures, it is valid to have an approach that does not respect parity of participation when it has more than one method of participation?

Q40 **Rob Roberts:** I guess the question is around the parity situation, which led to restrictions. If the parity situation was not there, but we still had hybrid proceedings, could those proceedings be more flexible?

Mark Hutton: As John has suggested, if we had a limited amount of virtual participation, that would itself be more constrained, and the physical participation would be capable of being closer to ordinary



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participation that we are used to in the House of Commons, although all the reservations about there being only 50 Members in the Chamber and the need to circulate Members as they have made their contributions would still apply. So I think that is fine.

There is an underlying principle at play, which is why parity was introduced in the first place, around the extent to which the institution is comfortable with the idea of institutionalising, by setting up rules that create a lack of parity. I think that, where any Member can be in either category, it is not a problem, but if you start creating different forms of participation that do not have equivalence of some sort, and some Members will be in only one category, you are creating an institutional problem and, possibly, a challenge to the way in which the House has always operated in the past.

Rob Roberts: Dr Benger, do you have anything to add?

Dr Benger: No. Mark strayed into that riskier territory, which is good—I have nothing to add, but I agree. If we take points of order, for example, before Whitsun, they had to be submitted in writing to the Speaker, which was quite interesting because relatively few found their way there because, quite often—oddly enough—Members use the device of a point of order to raise something that is not strictly a point of order. Under the more elaborate procedures that prevailed to give parity, the number of points of order mysteriously shrank. One assumes that there would be nothing to stop the Member in the Chamber from raising a point of order under the new arrangements, whereas a Member on a call list participating remotely would not be able to. That is just one very specific example.

Q41 **Rob Roberts:** Leaving aside the scurrilous accusation that points of order are used inappropriately—I could not possibly comment—I shall move on to my final question. As the accounting officer of the House, Dr Benger, what kind of estimate have you made of the additional monthly cost to the House of supporting virtual participation in proceedings?

Dr Benger: That is a good question. Obviously, when it first came in, I offered an accounting officer memorandum, as I am required to do under the Standing Orders for expenditure above £50,000. I have just had answer on that today, because we are preparing for a parliamentary question, and our committed spend to date is around £1.3 million. I think it is safe to say that that will not be the overall cost to public funds, because there have no doubt been significant savings, for example in the costs of Members travelling to Westminster and so on. It is very difficult to give a really accurate picture of what this whole thing has cost. The best I can give you—as I said, this is coming up in a PQ answer soon—is that our committed cost to date is around £1.3 million.

Q42 **Rob Roberts:** Do we have anything that says what it is on an ongoing basis? Every month it will cost x amount for the tech, for example.

Dr Benger: I think we can get that figure. The thing is that a lot of that is now expenditure relating to the Lords. Where we are now in terms of the committed expenditure is kind of it for the Commons side. Going forward,



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it would be significantly different only if the House chose a different route, and went with some sort of return to virtual proceedings. I suppose that there are ongoing costs on the Select Committee side, but I would rather write to you with a more accurate figure for the ongoing cost now and going forward month by month, because I think it will be different from where we were before Whitsun.

Chair: We would appreciate that because we want to understand not just what the set up was—I suspect a lot of that cost was the set up in the first place—but also what it would cost to keep virtual participation going, even on a very limited basis.

- Q43 **Jack Brereton:** One of the main reasons that colleagues want to go back to more physical participation has been the lack of Back-Bench time and lack of opportunities for participation. Obviously you have already said that this is not going to be the same as normal in terms of physical proceedings. What thought have you given to how more Back-Bench time could be facilitated given the restrictions that we are facing?

Dr Bengier: That is largely a matter for the Government and the usual channels to agree, but on the hybrid model, we are under, when we are operating it, quite considerable technical pressure and have considerable technical challenges. Getting the call lists together and getting deadlines in place for the various speaking lists is hugely challenging. Some of that will go away if the orders are not renewed, as it were.

I think we could only really operate on three days a week under the hybrid model. We expanded it a lot. We went from 2 hours to 6 hours to longer than that when we reduced the intervals. We were already expanding the amount of time available to the House under hybrid. Obviously, if Thursdays come into play, that is the day traditionally that is available for Back-Bench debates and for Petition Committee debates and so on. That is one area that could come into play, but ultimately I think it will be up to the Government—

- Q44 **Jack Brereton:** Westminster Hall as well? Have you thought about that, as that may need to be used?

Dr Bengier: That would put us under enormous pressure in areas where we do not necessarily have the staff capacity, particularly in terms of Hansard and Broadcasting staff. I think we would struggle to switch Westminster Hall back on in the near future with our current staffing levels, but I understand the point you make that it is a very significant area for that sort of debate, absolutely.

Chair: I think you are summing up some of the concerns that the Committee has about the role of a Back-Bench MP and how much a Back-Bench MP is actually able to achieve in the proposals that we have for a fully physical Parliament, given the lengthy Divisions, the imposition on Select Committees from those Divisions and the lack of having another debating Chamber.

I want to bring in Owen Thompson and Liz Twist and then we will have



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some final wrap-up questions and then we will let you go. We are very appreciative of the fact that you have given us slightly longer than we were anticipating, but this has been very useful.

- Q45 **Owen Thompson:** Following on from that point, obviously there are the limitations on the ability to participate, but the removal of virtual participation itself will present a fairly significant impediment to a number of Members' ability to represent their constituents. Would you consider the removal of virtual participation as an impediment? It is maybe too much of a tempting question to ask you.

Dr Bengier: Yes, I thought someone might try to draw me into that. I thought, "I must make sure I am not going to be drawn into that", so I am not going to be drawn into that. I think ultimately the House has to determine these things. It is a fundamental principle that outside people should not impede parliamentarians in going about their duties. That would be a contempt if they did.

We are in an unusual situation. Mark alluded to this in much richer detail, but we are in a situation where potentially there are different levels of participation open to different Members. Ultimately, the House will have to decide this, I am afraid. I cannot pass a judgment on that. I can only notice that that must be the case. If there are some things that some Members can do and some things that other Members can do, that is a stark fact, I think.

- Q46 **Owen Thompson:** It was worth a try to pull you into that. Finally from me, what lessons do you think we could learn from looking at what happens in other Parliaments and devolved legislatures and perhaps other Westminster-style chambers around the globe? Have you looked at examples there of what works and what does not, and what we could do to manage procedure under coronavirus restrictions?

Dr Bengier: I have been in a lot of contact, certainly with colleagues in Cardiff, Edinburgh and Belfast, but also with Commonwealth colleagues in Canada, New Zealand and so on. We drew a lot of admiration and envy for how rapidly we introduced the measures to allow our Parliament to function in some sort of form so quickly. We were probably the quickest of all the major Parliaments. Curiously enough, Brazil has an extensive infrastructure in place to allow a kind of virtual Parliament from the get-go, including all sorts of separate technology, but apart from that I am not aware of anyone who offered such a comprehensive solution so quickly. They are all doing it in somewhat different ways.

I suppose it is worth noticing that some of those bodies already have some of these things available. Within the EU, for example, there are Parliaments where Members can already vote remotely—not very many, but it does happen elsewhere. It depends where you are starting from, but from where we started from, we feel we advanced very rapidly. We are in touch with them, not just about the procedural aspects, dear though those are to my heart, but about the public health measures. We have conversations with them on a fairly regular basis to try to ensure that we



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are getting the best practice we can from wherever we can find it. We are talking and we are learning, and it has been a very fruitful discussion.

- Q47 **Liz Twist:** Dr Bengier, you have talked about the staffing implications of Public Bill Committees. I wanted to ask about the physical issues connected with meetings of the Public Bill Committees, which can be about 17 Members. Are the facilities we have able to cope with that?

Dr Bengier: Thank you; that is a perfectly fair question. The view we are taking is that two of the Committee Rooms, Committee Room 10 and Committee Room 14, are very large rooms that can accommodate a decent number of Members and maintain social distancing. We will ensure that the rooms are marked up in such a way. You are quite right; I think the minimum number is 16 Members, and I imagine we would be looking at the usual channels not to go for maximum numbers, because then it would become impossible. We could not have 50 Members in those rooms, however big they are, with any sort of social distancing norms in place. But we are confident that those two rooms can be made to work, and there are other rooms that might be adapted fairly quickly. We think we can do it in terms of the seating arrangements.

The other things to think about are where the officials sit and getting people in and out of the room safely. That is the only other factor. Thinking has gone on about this. A lot of work has gone on, and we are confident that we can support two parallel meetings of General Committees at any one time. What we might need to ask, though, is that those Committees do not just meet on Tuesdays and Thursdays, but that we bring Mondays and Wednesdays into play as well to manage the flow and the pressures. I think the Government are aware of the limitations under which we are working.

- Q48 **Liz Twist:** So it should be possible to have the full Committee take part.

Dr Bengier: Yes. Obviously, the quorum is lower than that number, so you may not need all that number in the room at any one time.

- Q49 **Liz Twist:** What about when other Members come in, either to observe or if they have amendments to speak to? Would that cause any issues?

Dr Bengier: They would be members of the Committee anyway, if it was a Public Bill Committee, so I do not think that would cause issues. It is an interesting question about other participation in DL Committees. Mark, do you know whether any particular thought has been given to that?

Mark Hutton: I am not aware that it has. Obviously, it is possible for a Member who is not on a Delegated Legislation Committee to take part in its proceedings. I have not seen anything myself, but the Public Bill Office has been working on arrangements for those Committees.

- Q50 **Chair:** Can I just check that there is nothing to stop this happening, even with a hybrid Parliament? If we continue with the Chamber being hybrid, will that interfere with the work of Public Bill Committees, or can they still carry on and take place, with no need for them to follow any hybrid rules?



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Dr Bengier: No. The House can determine what it is like, but it would be perfectly feasible to say that, let us say, by virtue of the complexity of their proceedings—I know that trials took place with virtual Public Bill Committees meeting on Teams, so that was at least looked at—there is absolutely nothing to prevent the House from operating in a hybrid form in the Chamber and in physical form in Public Bill Committees. Moreover, that is currently possible for witnesses, if the Committee is taking oral evidence, which is something that I know is coming up soon as an issue. That is already permitted anyway under the current rules. There is no reason why that could not happen.

- Q51 **Liz Twist:** Finally, the Speaker has made it clear that if he thinks that the Chamber is, shall we say, overloaded, he will have no hesitation in taking action. What would be the position in the Bill Committee, or another Committee, if that were the case in one of the Committee Rooms? Who would take that decision?

Dr Bengier: The Chair would have a role to play. Mark, can you expand on that? It would be quite an unusual circumstance. I don't know whether you think, Mark, that there would have to be specific provision for that, or whether it would come under the existing procedures that apply for disruption in Bill Committees.

Mark Hutton: I think there would need to be specific provision if it was considered to be a serious risk, because the Chair of a Public Bill Committee or Delegated Legislation Committee does not have the disciplinary powers of the Chair in the Chamber. All they can do is report poor behaviour by members of the Committee. If you are looking for a gap in the arrangements, as it were, leaving the current Standing Orders and rules for Public Bill Committees completely unchanged will reveal a couple of places where you might want some other arrangement, and that is certainly one of them.

Dr Bengier: Good point.

- Q52 **Chair:** We have concluded our specific questions around the way that Parliament is expected to operate from tomorrow. Clearly, there are an awful lot of questions still that we will have to wait to have answered as we get into the proceedings and see how they work.

To finish, there has been a lot of debate about a Member's right to attend the House without interference, and some have concerns about the way that that is being interpreted. Do you have a view about that Members' right, and are there circumstances in which a Member would not be able to attend because of rules and regulations that might be in place and that would be perfectly valid reasons for preventing a Member from attending Parliament?

Dr Bengier: I have talked about this with Mark, who is our authority on privilege. I know that he has definite views about this, so I think he should kick off.



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Mark Hutton: There are a couple of things to say about this. So far as I understand it, the basis of the claim of this right is the House's traditional claim for privilege from freedom of arrest, which was derived from a desire to prevent Members of Parliament from being prevented from doing their duty and being able to get to Parliament because they had been arrested. That claim was recommended for abolition by the Joint Committee on Parliamentary Privilege in 1999, because it is no longer of any effective use, since it only ever applied to arrest in pursuit of a civil claim, and committal for civil cases no longer arises.

The House certainly does not claim any privilege that would prevent a criminal arrest, and indeed your Committee, a Parliament or so ago, looked at the arrangements for the House being informed of the arrest of Members by the police, and made a change to those, which the House agreed to. When the House agreed to that change, it also agreed to a resolution that said, "Members of the House shall be under no undue restraint from being able to attend the House." So I think the House itself has recognised, publicly, that there are things called due restraints. The criminal law is a due restraint, undoubtedly, and it may be that, in other circumstances, other things would also be due restraints.

I should perhaps end by saying that the point about the freedom from arrest privilege is that, as with all privileges, it is not specifically a privilege to grant an immunity to an individual; it is a privilege to allow the proper functioning of an institution.

- Q53 **Chair:** So if there was a regional decision to isolate Cornwall—for the sake of using somewhere that could potentially be isolated—and nobody was allowed to cross the county border, that would apply to MPs too, in your view.

Mark Hutton: If it was made a criminal offence to leave Cornwall, then, undoubtedly, Members would be caught by that criminal offence. They would be as guilty of it as anybody else, and they would have no exemption from it, unless it was provided that they did in the law itself. If it was guidance, then, like everybody else, they could follow the guidance or not, but they would be in no different a position. They could make a claim about the need to represent their constituents and the need to be present in the Chamber, which would be persuasive or not depending on the circumstances, but they would not be in a fundamentally different position from anybody else.

- Q54 **Chair:** Thank you. If there are regulations or guidance that appear to prevent travel to Westminster to attend the House, would a Member have any recourse?

Mark Hutton: Not against the regulations, if they were properly made regulations. They would presumably have gone through a parliamentary procedure, so, no, not against the regulations themselves.

- Q55 **Chair:** I am trying to tease this out. If we have somebody who has been told that they are not to leave the house for their own health—this is a regulation that has been imposed on them—but they want to represent



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their constituents, is there any recourse to them, given the fact that attending Parliament will mean that they are putting their health at risk? Is there anything there that we can help Members with?

Mark Hutton: One thing to say is that the freedom from arrest privilege, which obviously is very old—it has been claimed that it dates back to the 14th century, but it is certainly very old—is entirely, in its concept, around physical movement, and physical arrival at a particular place. However, in its essence it is a privilege of participation in a proceeding, so one recourse you have is to allow participation in a proceeding, which would be permitted under the guidance that you are faced with—some form of hybrid proceeding, for example. It is not the case, I think, that any Member can claim any particular legal position or exemption from the ordinary operation of the law in this respect.

Chair: That is very helpful. It helps to clear up some of the questions that we have had. I will bring in Chris Elmore.

- Q56 **Chris Elmore:** Is there precedent on this in relation to the expenses issues in 2009-10, not to go over old ground, of course? I am not a lawyer, to be clear. I am not passing comment on any particular circumstance, but an awful lot of some former Members suggested that they had privilege and therefore could not be under criminal proceedings. Would that not be a similar position? I am not trying to press for a point of view, Dr Bengier or Mr Hutton; I am just trying to understand.

Dr Bengier: They did not win that case.

- Q57 **Chris Elmore:** Sorry—that was my point. They obviously lost it in court, so it would be the same position, I am assuming.

Mark Hutton: Absolutely. Members have a protection from the criminal law for their participation in a proceeding. You can stand up on the Floor of the House and say something that would otherwise render you liable to a criminal action, and you will be protected, but that is very narrowly confined to the actual proceeding itself. There is no broader protection.

The Members that you are referring to were trying to claim that the act of claiming an expense was a proceeding in Parliament, and the sort of thing that that core protection is designed to protect. They lost, and I think no one was surprised that they lost.

Chair: Thank you for your time today. I know that this has been a lengthy session, but we all had a lot of questions. Dr Bengier and Mr Hutton, that was very informative and very helpful. It will, of course, inform the Committee for the debate tomorrow and in the further work that we are doing, so thank you.