



Select Committee on the Constitution

Corrected oral evidence: The constitutional implications of Covid-19

Wednesday 10 June 2020

10.25 am

Watch the meeting

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

Evidence Session No. 3

Heard in Public

Questions 31 – 39

Witnesses

[I](#): Lord Judge, Convenor, Cross-Benchers; Baroness Walmsley, Co-Deputy Leader, Liberal Democrats.

Examination of witnesses

Lord Judge and Baroness Walmsley.

Q31 **The Chair:** Good morning. This is a meeting of the Constitution Committee of the House of Lords. We are conducting an inquiry into the constitutional implications of Covid-19. Today we are looking in particular at the impact on our parliamentary activities, and our responsibilities as parliamentarians to hold the Government to account. Our witnesses are Lord Judge and Baroness Walmsley.

May I start the questions in a general sense by asking about your personal perception, or the perceptions of the groups that you represent, of the work so far, the implications on our work as parliamentarians in holding the Government to account, and whether you have seen significant challenges and drawbacks in our virtual proceedings, and indeed even benefits?

Baroness Walmsley: Thank you very much, my Lords, for inviting us along. I am the Co-Deputy Leader of the Liberal Democrats and I chair our weekly group meeting. I thought I would start with the benefits, although I have to warn you that the drawbacks and challenges are a little longer. However, I can promise you that my answers will be a great deal shorter later in the session.

Regarding the benefits, through technology we still have some opportunities to fulfil our responsibilities, although of course there have been some challenges. A small group from our Benches has set up a very constructive working relationship with the technical staff, and this is helping to bring many of the issues to their attention, and to find solutions. I know the staff find that very helpful, and we certainly do, but there are still things we need to do. We very much need a user group and a dedicated telephone helpline rather than the current email address.

A second benefit is the determination by the commission that all Members should be treated equally. Thirdly, the proposal to have remote voting for as long as needed is a very good thing. The recent ludicrous experience in the Commons, where it ditched the idea, should be a salutary lesson for us in the Lords. Committees such as this one still have an opportunity to investigate how the system is working and to hold Ministers to account, and I think investigations by other Committees are proceeding as usual.

Written Questions are still being taken. Many of our Members find those very useful and submit quite a lot of them. It is a good way of holding Ministers to account, because, of course, they cannot bluster and fail to answer as they can in the Chamber, because there will be a series of further Written Questions starting with, "Further to the Written Answer of such a date ... ", to winkle out the information required. Of course, the civil servants who prepare the Answers have a duty to provide information. However, unfortunately, this is not regarded as parliamentary work by the new system of allowances and is therefore disincentivised in favour of speaking in the virtual Chamber.

Finally, parliamentary procedures are still transparent and available to the general public through Hansard and broadcasting, which of course is vital.

Turning to the drawbacks and the challenges, of course the principles that I had in mind when preparing my response to this part of your questioning are that the House should be enabled to carry out its role of holding the Government to account, and scrutinising legislation in its usual detailed and forensic manner, as you just mentioned, Chair. I hope all would agree that better scrutiny results in better government. Of course, we still have transparency through Hansard and the broadcasting sessions.

However, all the excellent work done to enable the House to work virtually has been undermined by an allowance system put in place by the predominantly salaried members of the commission, which has proved to be a barrier to proper debate and deliberation. My group thinks that it has distorted the workings of the House, prevented us from holding Ministers to account and is in danger of bringing the Lords into disrepute and strengthening calls for its abolition. It has made a laughing stock of the notion that we are a self-governing House, as the commission has produced a system that demeans both the House and its Members. If this strengthens calls for Lords' reform, I and my party would be very happy, but we do not want abolition.

Let me give you some specifics. First, despite all the hard work of many people, poor-quality connections often prevent Members making a contribution at all, or it is hard to hear what they have to say. Technical limitations have affected the number of participants in debates and the length of proceedings. These things have called attention to the variability of wi-fi connectivity across the country. It can only be a good thing that this has been brought to the attention of Parliament in such a graphic manner.

Secondly, a practical point; the lack of provision of hard copy of House papers has been a problem for Members with poor eyesight and Members dealing with legislation where they need multiple large documents. Many Members have struggled with adequate supplies of paper and printer ink. With so many people working from home, there has been a shortage. I had to scour the internet to find ink for my printer, and it took two weeks to get it.

Thirdly, a small group of Members have been cut out, because they do not have the requisite digital skills, and other Members, particularly unaligned Members and those from small parties, appear to have had a disproportionate number of opportunities to speak.

The most substantive point is that the current system does not allow the usual forensic questioning of Ministers, because of the technology and situations limiting the number who can speak and the length of speeches. In Oral Questions, Ministers can give whatever partial or non-answer they like, knowing that they are unlikely to be pulled up on it, whereas in the

Chamber Members can certainly show their dissatisfaction. I have noticed that in the virtual system later questioners rarely pursue a point from an earlier answer. This is partly because Members find virtual participation more stressful and therefore prepare what they have to say rather than respond to what has already been said.

I am afraid I have to make clear the negative effect of the current temporary allowance system, because it has damaged the efficacy of the House and has the potential to seriously damage its reputation. It is already undermining morale and distracting from the serious issues. If the changes to allowance mean that Members cannot afford to participate, the House cannot fulfil its constitutional role, and this could undo all the careful incremental and evolutionary reforms of successive Governments—supported, by the way, by all parties over the last two decades.

If these continue beyond the Summer Recess, only wealthy, pensioned, elderly and London-based individuals will be able to accept a nomination to the Lords, and make a contribution to the legislature. Such a House will not provide the necessary checks and balances on a Government with a significant majority in the Commons, which is an important feature of our bicameral system.

The changes made to allowances in 1998 were intended to ensure that younger people, and those who are not independently wealthy, could take part in the business of the Lords. This has changed the character of the House as much as, if not more than, the departure of most of the hereditary Peers, and helped to make the Lords much more diverse and representative of the country. I think that is a very effective check on the Executive.

Next, when I came into the House of Lords I was always told that the House is a house of experts and I should be very careful what I said, because if I got it wrong somebody would pull me up, and indeed I can remember one occasion when they did. The Appointments Commission tries to ensure that we are a house of experts, and this is an important element of the House's value. However, the current system of earning the allowance only if you speak has incentivised Members to bid for a speaking slot just to ensure they get paid; and to ensure they can pay their living expenses, and, in particular, commitments to London accommodation costs, in the case of those who are not based in London. Let us knock on the head the idea that our allowances have been halved. Most of my Members are receiving between 10% and 25% of their usual allowances.

The Committee may like to ask the finance department exactly how large the savings have been and by how much the savings have exceeded the costs of the broadcast facilities for the virtual and then the hybrid House. Members signing up to speak in ever-larger numbers has shortened the length of speeches in time-limited debates to a ridiculous extent, and has prevented some expert Members from making their points. The ballots for speaking slots arbitrarily cut out the Peers we really need to hear from.

A case in point is last week's debate about the situation in Hong Kong, where two former Governors, whose experience in the matter is second to none, were given only one minute to share their experience. This is an exercise in absurdity, and it is not the only example. I would suggest the length of debates on popular topics should be increased. The main solution to the problem, however, is to make the allowance system fairer, as it is having consequences that result in poorer scrutiny of the Government.

Finally, may I make two more points, one very short? The assumption that the only parliamentary work that is worth recognising with payment is what takes place in the Chamber is complete nonsense. It is the tip of the iceberg. My Members are spending as much time as ever on parliamentary business but are being paid a fraction of their usual allowance. They work with APPGs and NGOs, take up individual cases, meet and correspond with Ministers, submit Written Questions, and engage with in-party and cross-party committees and policy groups, all of which is important and valid parliamentary work. It is part of what the Lords is for.

They also spend many hours on non-paid days preparing for debates, Bills and Questions, and reading the mountains of paperwork that come out of Committees such as this one. The thousands of members of the public who correspond with Members would be horrified to know that time spent reading and responding to their correspondence is regarded as not worth paying for. By denigrating the work outside the Chamber as not being parliamentary work, the wider role of the House of Lords in the national debate, and in policy development and the representation of the voices of many interest groups, has been radically diminished and disincentivised.

The Chair: Thank you. You have covered quite a lot of topics there, even though there has been a particular focus. Lord Judge, would you like to give us your overall impressions of what has been working or not working?

Lord Judge: The most important point is that we are there. That is a great triumph. As a benefit—I shall come later, if I may, to discuss the way in which the whole issue is being structured—so far as the House is concerned, we are there. We need to be less hasty about how we condemn or do not condemn the hybrid arrangements, so I would like to declare that not only am I the Convener of the Cross-Benches, I am also a member of the commission that has just received that robust criticism—and fair enough. I will not discuss allowances, save this: there may be a case for looking at a full review of the whole system of expenses and allowances, and even pay, which would of course involve questions of tax and so on and so forth.

The biggest problem caused by the virtual House, and still in place with the hybrid House, is the lack of sufficient time for informed detailed debate of the main issues. I do not think that the House itself—and perhaps I might suggest not every member of your Committee, Chair—

understands how much time is taken up simply getting the place ready to do each stage of the process.

There are limits on the number of people who can speak within our brilliant technology. Very few people understand, and I want to insist on the point, that the people who work for us—the offices, the office of the Clerk of the Parliaments, the people responsible for broadcasting—are under pressure. We do not sufficiently recognise that they are treating this, rightly, as an emergency. As you all appreciate, an emergency caused by some dreadful bomb somewhere is immediate and everybody pulls his or her weight as hard as they can. Here we have been going on for weeks and weeks, and the system is dependent on people being able to work at emergency levels for weeks and weeks. I do not think we are fully appreciative of it.

My main concern, and that of my Cross-Bench team, is the lack of time for detailed analysis. The issue is whether we have fewer speakers and give them more time, or more speakers and let nearly everybody who wants to speak have a say but curtail them. I thought it was terrific that for tomorrow's debate on the Agriculture Bill, which obviously affects the whole country and on which my team includes some very serious experts, we have done away with some of the other processes so as to allow each individual sufficient time. It does not get over the fact that I had to ask a number of very serious potential contributors to stand down, because the Cross-Bench limit of 10 had been reached. That is the main issue.

I have some other points to make and this next one is a very short one. At the end of this process we will end up having to discuss issues such as virtual voting, virtual attendance and the like, but perhaps that is for later in the discussion.

Q32 Lord Howell of Guildford: I have been very interested in what has been said. My question is aimed primarily at Baroness Walmsley, but I would like Lord Judge's wise views as well.

Baroness Walmsley, I agree with a very substantial part of what you said in your very powerful opening statement. You have circulated and sent a letter to the Lord Speaker signed by a large number of Peers, making some of these points and urging that we should have more time for questions, or more questions each day, and generally expressing some dissatisfaction with the way things have gone. I share that view. Question Time is very frustrating and difficult.

We had a paper into this Committee from two experts, Alice Lilly and Hannah White I think it was, saying that virtual Committees are "playing a key role in scrutiny". "The existing Select Committee system is the main mechanism through which Parliament has conducted policy scrutiny during the crisis to date". That suggests to me—I do not know whether it suggests to you, and I would love your view—that it is really through a Committee system in a modern Parliament in a digital age, their power to penetrate the Executive and what it is up to, and their suitability for holding the fort, as it were, in online conditions rather better than a

plenary Chamber, that the strength of Parliament needs to be built up.

I notice that a number of foreign Parliaments have developed special coronavirus committees to concentrate with maximum fire power on what the Government are doing. Is that an area where we should be concentrating on rather more than trying to make the plenary Chamber work, which, frankly, is not very impressive when one sees 1/10th or 1/20th of the Members strewn along the Benches, which I do not think enhances public respect or trust for Parliament at all?

Baroness Walmsley: Thank you very much for referring to the letter, which was signed by 210 Cross-Bench Peers, although it was a few weeks ago.

Lord Judge: I do not think they were all Cross-Benchers.

Baroness Walmsley: Across all Benches. I am very pleased to say that the vast majority of the things we were asking for to improve proceedings have now come to pass, including the hybrid House. One request was not granted. You are aware that every day the Prime Minister or a senior Minister holds a press conference and is scrutinised by members of the press, and now members of the public as well.

Our suggestion was that the same sort of thing should be happening the following day in the House of Lords, to give Parliament an opportunity to ask questions about whatever it was being announced that day. It happens now and then when we have a Statement, so people have a chance to ask questions then, but we have noticed that the subject matter of Oral Questions has now been distorted, so there are a lot more questions about Covid-19, and a lot of other important issues of state are not getting a look in.

My Benches still think it would be a good idea to have a special Covid-19 Question Time during the day, or the repeat of the previous day's press conference, to allow Oral Questions to concentrate on other things. I agree with you that Committees are functioning reasonably well, although there are still some issues, such as the two-hour broadcasting slot. I am on the Science and Technology Committee, and we have found that that is a limitation. We cannot ask the witnesses as many supplementary questions as we would like because of the time limit.

The technology is also slightly limiting. I am sure your Committee has found, as ours has, that when people raise their hands, the Chair is very often able to come to them, but it is the time limit that makes it difficult. If you are suggesting a Committee focused entirely on the Covid-19 pandemic, of course, as you are aware, the House has just set up such a committee. Indeed, the Science and Technology Committee is currently focusing on the science of the pandemic, so there are two Committees focusing on it. However, of all the things that are working in the House at the moment, I agree with you that the Committees are working best.

The Chair: Lord Judge, you had some time on our Committee, so you have seen Committees working very closely. Would you like to comment?

Lord Judge: The way the Committee system works is wonderful, not least because, however disparate the political representation is, the Committee, in my experience, never divided on party political lines.

May I come to Lord Howell's question? I agree with him about a lot. If we can create more time for the system, we will get more done. Allowing 10 minutes for each question as opposed to seven is an improvement. What is inevitably missing is the atmosphere in the House, so that when the Minister gives some outrageous or absurd answer, he or she does not feel that atmosphere and realise that it is indeed an outrageous or absurd answer, and it is not followed up by somebody from a different Bench asking a further question that may reveal the absurdity or the outrageous nature of the answer.

As to Select Committees, it is very nice to give ourselves a few pats on the back, but I want to take a little more time to answer. It may be a question that arises later, but I will answer it now. The reason Select Committees work so well, or much better than the Chamber, is not to do with technology; it is to do with the fact that they are focused. If we examine what we have done, we have legislated for the most extraordinary interference in people's personal lives. I cannot hug my daughter because she lives in a different place. My grandchildren cannot run to see granny when they want to see her, and she cannot pick them up and give them a cuddle.

If you had said to somebody six months ago that that would be part of our system, they would be horrified. We are all prepared to accept that that is a necessity to avoid further deaths and illness, and so on, but we must not allow ourselves to overlook how huge these powers are. They were given to the Government by Parliament, and the end result is that Parliament does not have sufficient control of the Executive and does not have sufficient means to make it accountable.

I am all in favour of an independent press, and I think all the members of the Committee who served with me will have heard me say that I regard an independent press as a constitutional necessity. I also think that the Government can have as many press conferences as they like, and it is up to them. However, there is a big proviso, and that is that press conferences are not a substitute or replacement to bypass or ignore Parliament, by which, of course, I mean the Commons in particular.

If we require a daily press conference, and I must say I have great reservations about whether we do, the issues should be addressed daily before the press conference in the Commons. The same information should be given to the Commons. There are two particular reasons for that, the first of which has just been touched on: it makes the Government accountable. Also, it would be quite useful to know the views of the Opposition on these issues day by day, revealed in the House rather than in an occasional question by one of the political commentators of Sir Keir Starmer.

We are overlooking the fact that this crisis has involved huge changes to what I would regard as our personal liberties, so the way in which the Government are approaching the process of accountability and explanation should be directly addressed in Parliament. One of your questions is whether Parliament has been properly engaged, to which the answer is no. Your other question is whether Parliament has been able to question the use of these emergency powers, to which the answer is no.

I would add, Chair, that in the debate at the Committee stage of the Coronavirus Bill on 25 March—I could not be there, because I had obeyed orders and disappeared back to the country—if you read what Lord Anderson had to say in his observations on Amendments 11 and 12, you will see that he was urging that if we are going to have a reporting process and a review process, and I entirely agree with him that we need both, it should not be entirely in the hands of the Government.

I would urge the Constitution Committee to look at what limitations and requirements it should have of the Government in relation to any reporting process or any review process. I have gone on too long, but if we did that, it would not be the Select Committees that were getting all the glory; it would be a matter of ensuring that the right accountability process was in place, and the Commons in particular—obviously, like we all do, I defer to the Commons about this—should be insisting on these processes. It should be insisting on the Government coming daily to it, if the Government think a daily conference is needed. If the Government does not think one is needed, the Commons can ask for one when the Commons thinks one is needed. I have said my piece on that.

By way of a footnote, the Covid-19 Committee, to which Baroness Walmsley just referred, is not a public inquiry or an inquiry into what has gone wrong. It is much more a Committee directed at what the country will look like and how it will cope with the problems to which coronavirus has given rise and has revealed. It is a future-looking Committee.

Baroness Walmsley: I quite agree. I was a member of the Liaison Committee, which set out its remit, so I agree.

The Chair: Thank you. That has given us some interesting points to follow up. Baroness Fookes, do you want to come in and follow up some of those aspects?

Q33 **Baroness Fookes:** I was planning to ask about the impact on different types of business, but I can see that some of that has been answered. I am very interested, and indeed concerned, about the impact of virtual proceedings on the work of Bills, particularly at their latter stages after the Second Reading, and the work of statutory instruments, because we know that major pieces of legislation and many important statutory instruments will be coming before us in ever-increasing numbers.

Lord Judge: The whole process of examination of statutory instruments is suddenly going to hit us. I do not think we have been as alert to it as we have needed to be. That will be very significant and, if I may say so,

it will reduce the time for the major legislation, the primary legislation, and we will be squeezed for time.

We are not helped by the fact that we have a Brexit date and a whole lot of legislation must be in place to cope with what will happen when we leave the EU on 31 December. I do not think the way in which the House handles statutory instruments virtually will be very different from the way in which the House handles primary legislation virtually. People will just have to recognise that there is only a limited time in which they can say their piece. That is the particular problem. I do not think the way virtual or hybrid works for Questions, PMQs, Statements and the like is very different, but statutory instruments will require particular attention.

Baroness Walmsley: I quite agree that, so far, scrutiny of coronavirus-related SIs, which is of course where most of the additional powers are to be found, has been inadequate. Many of the SIs still have not been debated, even though they have been in operation for some weeks and, in some cases, months. It is not clear whether there has been any progress in bringing debate on them forward, at least the initial debate.

One thing has worked rather well in relation to legislation, and that is the Committee stages, where we have been able to bid to speak after the Minister has spoken. You have to send a little email and you are called to speak by the Chair. That is really important, because it is where the real debate often happens. It can be very productive, and it helps the Minister to get a measure of the strength of the opinion about the amendment. That allows us real debate. If we could only bring in some sort of system like that when people want to intervene on a Minister in other situations such as at the end of a debate, we would have a less sterile discussion.

The Chair: I think we have all noticed that spontaneity has been lacking in a whole lot of our proceedings. and there is a sort of structured spontaneity in those circumstances.

Q34 **Lord Wallace of Tankerness:** Both Lord Judge and Baroness Walmsley have already reflected on some of these things, including the way in which virtual proceedings have changed the way Members participate and the style of the debate. Lord Judge mentioned the invidious position whereby having 10 Cross-Bench slots for the Agriculture Bill has meant that people with a lot of knowledge have not been able to take part.

Are you able to say, Lord Judge—if you cannot, I understand—how you choose the 10? Likewise, could Baroness Walmsley give us some insight into how the Liberal Democrat people are chosen? Does that make the House more or less inclusive?

Lord Judge: You can decide whether it makes the House more or less inclusive, but there is no secret about the way in which the Convenor's very limited powers are exercised. To begin with, when the collapse happened, I worked on the basis of a ballot with a random selection; names went into a hat and were drawn out by my wife. Then we discovered that we had a randomised selection system on the computer, so the computer did it. There was an early debate on food, led by

Baroness Boycott, in which the randomised system produced a full batch of Cross-Benchers who wished to speak, but left out some very significant experts in the field. I asked the Cross-Benchers if they would be prepared to give the Convenor a discretion to adjust these lists as randomised so that experts could, where possible, be allowed to be heard, to which they agreed.

There is no secret about the system for the agricultural debate. I had 19 people wishing to speak. Five could come to the House, but if they did not still only 10 were allowed virtually. I saw the list as at Friday evening, not completed. I wrote to all those on the list saying, "If this Agriculture Bill is not your primary interest, I would be very grateful if you would withdraw and write a letter to the Minister instead". I had a very helpful—and, as expected from the Cross-Benches, sensible—reaction from a number of people who had issues which they wanted to raise but who recognised that this was not their primary interest. So we had 10 people to speak virtually and two in the House, all of whom without exception have a primary interest of one kind or another. I do not mean just in digging; it may be in growing food or the devolution issues.

I work on the basis of a randomised system. If tomorrow there is another debate in which a number of my Cross-Benchers have never spoken or asked a question and have held back, I would try to work on the basis that if you have never had a chance to ask a question and you want to ask one, it is an indication that you have a real interest in the subject, and I would adjust the list accordingly. It is randomised with an overall discretion. If the Cross-Benchers do not like it, they will no doubt cut my powers down, and you can decide for yourselves about it.

Lord Wallace of Tankerness: That is very helpful.

Baroness Walmsley: As you might expect, the system is quite consensual in the Liberal Democrats. Usually the spokesperson for that particular portfolio area will speak, as will people who are in the same portfolio team within the party. Other people put their names forward and, yes, we sometimes conduct a ballot. Having said that, if there are certain people who we know have a major contribution to make but who do not come out in the ballot, colleagues are asked if they would not mind stepping aside to allow us to hear from that person. On the whole, in fact 100% of the time, that has resulted in colleagues being quite happy to give way so that we can hear from who we really need to hear from.

Lord Judge: We do not have any spokesmen among the Cross-Benchers and we have no team, so the starting point is slightly different.

The Chair: Let us move on slightly. Lord Sherbourne, do you want to follow up on some of what has already been said about government engagement with Parliament?

Q35 **Lord Sherbourne of Didsbury:** I want to ask a slightly narrower question about the relationship between the Government and the parties

and groups in the Lords, and ask both Lord Judge and Baroness Walmsley how effective they think the relationship has been between government and the parties, in two respects: first, in the establishment of the new procedures that have been required during this Covid crisis; and, secondly, within the new framework and regime, how effective the relationship has been between Government and Parliament in arranging and managing the business of the House.

Lord Judge: I am an observer. I attend the usual channels meetings, or most of them, and I am on every Committee you can think of, from the commission, to Liaison, to Select. I cannot even think how many I go to. I would say—looking at it quite objectively, because for this purpose, indeed for every purpose, I am apolitical—that there has been a high level of co-operation. I have observed all the political parties genuinely trying very hard to ensure that they do not let political considerations interfere with what a collective view would identify as the best interests of the House to get the business done. It is to the great credit of the Chief Whips of all the three main parties, and of course their leaders, that that is so. Indeed, on occasions I have been surprised at how little energy is being used up for political reasons when the opportunities have been there, on all sides.

My general approach is that I am delighted to be part of it. I recognise that when the Government Chief Whip, and this is not a criticism but an observation, has to make a decision that might marginally disadvantage his party—obviously, if it would seriously disadvantage the party, he would argue it through and ensure that it does not—he is always willing to take the view that he has to cater for the Cross-Benchers and the Lib Dems and so on. We discuss proposals on procedures, but of course all the proposals go to the Procedure Committee, which is completely cross-party. Again, I have not detected party political engagement here, which I regard as admirable.

My answer to your question is they are either fooling me or the system is working as it should.

Baroness Walmsley: I have had to ask my Leader and my Chief Whip about some of these things because I have not been party, as Lord Judge has been, to the usual channels meetings. I am told that the channels of communication have been kept open right from the start, and I agree that through that we have been able to transform the way the House operates fundamentally, and in a relatively short time.

If there is one caveat, it is that it could have been better if there had been a more holistic approach to communications and Member services. Consultation and communications have been bedevilled by the departmentalisation of the Lords' administration, with the alphabet soup of acronyms—the PBU, the PDS, the clerks, which now have a new acronym, and Lords' communications, along with the Committee structure, the commission, the Services Committee and the Procedure Committee. They are not all joined up, but on the whole it seems to have worked reasonably well.

There are times when my Benches would have liked to move more quickly, but procedurally we have now done a lot to facilitate Member participation and the work of the House. In particular, recently, since the Government realised that they cannot get their business through unless they facilitate the hybridisation of the House, we are very grateful that they have been very helpful in enabling that, and virtual voting.

The Chair: Let us move on to a slightly different topic of the emergency powers legislation and what we are working with at the moment.

Q36 **Lord Beith:** I would like to return to the personal freedom issues raised by Lord Judge. Some of those arise not from what Parliament has done at all but from ministerial statements. We have had this very difficult situation where people have treated as enforceable law what were merely statements by Ministers. Much of it arises from statutory instruments made under 1984 public health legislation for England, or, in some cases, under the recent Coronavirus Act.

Ought Parliament to have done more to insist on processing the use of these powers? There were 21-day renewal periods and there still are for most of these powers. There were debates that should have taken place, in some cases thwarted by the House going into recess at the moment when the debate should have taken place. Can Parliament be excused blame for not insisting on exercising more control over these emergency powers?

The Chair: It is a big question. Who wants to start on that? Lord Judge.

Lord Judge: As I have been a member of the Committee, I have to be careful not to say that you have heard me on this subject before. Going back to it, to hear the media conference at 5 o'clock in which the Minister declares that this must be or this must not be, without any reference to anybody but his brief, and presumably the department's briefing of him or her, strikes me as exactly what is wrong with a system in which there is a media discussion and no parliamentary discussion.

Laws that cannot be enforced simply because they cannot be enforced are very undesirable. To treat as enforceable things that are not law is extremely dangerous and unwise. We have to be much clearer about the control that Parliament should have exercised—the Commons in particular—and should have been entitled to exercise at the Report and the review stage. That is a serious deficiency.

I share the concern in your question, Lord Beith, about the vast extent to which our individual freedoms have been impinged on—"infringed" is a stronger word and more accurate—by the way in which the coronavirus issue has been handled. I am not being critical of the handling of the crisis itself. That is a matter for somebody else and a matter for a lot of deep discussion long after it has passed by.

Day by day, we are allowing these things to happen without questioning it. That seems to me to be a constitutional aberration. We do not have a constitutional control over those arrangements, and it troubles me.

The Chair: Baroness Walmsley, would you like to add anything? We are going to have to speed up a little because we are going run out of time, as you were saying about lots of Committees. Do you agree?

Baroness Walmsley: I agree, which is why in the letter I circulated we asked for a daily Statement to reflect what was in the press conference. We were told that the reason why that was not granted was because it is not done in the Commons. However, I quite agree with Lord Judge that it should be done in the Commons, and it should be done before the press conference, not after. That does not mean to say that it would not also be very useful for the Lords to be able to question Ministers on those rather arbitrary announcements, some of which have been reversed the following week.

Baroness Corston: I have a supplementary question particularly in relation to when Parliament is not sitting, or sittings are restricted. To what extent are the safeguards on emergency powers, such as provisions for 21-day reviews, compromised?

Baroness Walmsley: They are compromised when Parliament is not sitting, when Parliament does not have the opportunity to challenge Ministers. One can of course write to Ministers, and we do. Indeed, very often there are demands in emergency situations for Parliament to sit during a recess. That is a very important power.

Lord Judge: I regret that, like so many of us, I did not realise that this crisis was going to be quite so deep and quite so long, as it appeared to me at any rate, at the time in March when we all came home. Looking back on it, I think it would have been better if we had not been in recess and we had been sitting. That would have been very inconvenient for us all and very inconvenient for the Commons Members who have huge constituency issues to address, but I think there has been a gradual decline in the extent to which it is understood that Parliament should be controlling these questions. That is because we had three weeks when we were all away. I wish I had had more foresight about it.

The Chair: Foresight, like hindsight, is a wonderful thing. I think we probably all share some of those concerns. Baroness Drake has a question on another aspect of this, perhaps.

Q37 **Baroness Drake:** The issue I want to point to is fast-track Bills. We have had the Coronavirus Bill and now we have radical changes coming in the Corporate Insolvency and Governance Bill. Lord Judge, we have had your views already on the importance of the right accountability to Parliament, which you feel is not there now under the Coronavirus Act. May I put the question to you at first instance: what lessons can be learned from the parliamentary scrutiny of the Coronavirus Bill as a substantial and complex piece of emergency legislation?

Lord Judge: The lesson is that we have to build greater safeguards into the legislation that we feel obliged to pass in order to meet with a huge crisis. That is why I commended Lord Anderson's observations on 25

March. It is up to the Constitution Committee to decide what safeguards should automatically be written in so that when we are faced with emergency legislation, as with coronavirus, there are built-in controls on the way in which the Executive are working so that the legislation itself makes the provisions that provide for control.

As for speedy legislation coming through—for example, the Corporate Insolvency and Governance Bill, which is dashing its way through the House—one has to be a little less stringent there. If all the major political parties think the legislation is sensible, the only warning I would give is, “Please, do not allow the Government to have endless Henry VIII-type powers”. That is a cry you have heard me make very often, and I shall go on making it.

The Chair: And it will continue to be relevant, I am afraid, but the point is well taken.

Baroness Walmsley: The Coronavirus Bill had virtually no scrutiny. During a national emergency people felt that votes were inappropriate. The point should be made that long and complex bills such as this do not lend themselves to being dealt with at a very rapid rate, and a range of issues could not be explored. It was accepted by all parties, of course, that there was a need for speed in the circumstances, and a lot of what the Government were proposing had to be taken on trust. The only thing people focused on, reflecting what Lord Judge has said, was the need for a review or a sunset clause so that one had some control.

The Chair: Shall we start looking a bit towards the future? Lord Howarth has a question.

Q38 **Lord Howarth of Newport:** I should perhaps declare that I was a signatory to the letter which Baroness Walmsley, I think very helpfully, put together. Thank you for that.

Looking forward, perhaps the only thing that is clear is that we are not going to revert to our pre-Covid arrangements and proceedings in the foreseeable future. Therefore, what procedural or practical changes do we need to be thinking about to ensure that Parliament functions effectively, to the satisfaction of us as parliamentarians and, more importantly perhaps, to the satisfaction of the public and their expectations of the role of the House of Lords?

Baroness Walmsley: As I mentioned earlier, during proceedings it would be really helpful to find a way of allowing Members to come back to a point if the Minister has not answered it, perhaps building on the model of what happens at the end of an amendment at Committee stage, which works very well. If that could be incorporated into other kinds of business, that would be good.

In the meantime, I have to say that if we could make the current allowance system fairer and recognise the wider scope of the work of Peers, a lot of the problems would go away. In the longer term, I absolutely agree with Lord Judge that we need to set up an independent

inquiry into a system of allowances that is seen to be fair and does not distort the work of the House. Finally, and you would expect me to say this, reform of the House of Lords to make it predominantly elected and salaried is what we really need.

The Chair: I think that is taking us a little wider. Lord Judge.

Lord Judge: We as parliamentarians should learn better how not to read out our carefully prepared question. A carefully prepared question usually reflects a good deal of work, but if the Minister does not answer the first or the second question, we really must be teaching ourselves better to ask the Minister, "Would the Minister mind addressing the question asked by Baroness so-and-so?"

The other lesson we have to learn when all this is over—this is quite separate from the issue of the size of the House, on which I could also speak for a long time—is whether, having allowed virtual voting, we should say to Members of the House who have a serious role to play in it but who for one reason or another are disabled from coming to the House to speak, and certainly to vote, "Now that most of us are fit and well, you have to come in to vote".

We have to recognise that technology will continue to play a significant role in the way the House does its work. That is a prime example, and there will be others. I am not a technological whizz-kid; I am very interested to see how the hybrid House works, and to see what lessons we can draw for our work with the technology. Virtual voting gives us a prime example.

Baroness Walmsley: May I add to that with an example? I absolutely agree with Lord Judge about the need to continue with virtual voting and virtual proceedings for people who are sick and disabled. One of my colleagues, who had been long-term sick, wanted to take part in the virtual proceedings of the House because it is now possible to do that, but she had not signed in. She had to take a taxi from Yorkshire all the way down to London, go into the Chamber, sign in and get a taxi all the way back, to be able to take part in the virtual proceedings for the last couple of months. That is ridiculous. We really need to more flexible.

The Chair: Thank you for that. Before I bring in Lord Howell, who wants to push this out a little into the slightly longer term, I know Lord Wallace wanted to ensure the Committee knew he also had signed the letter, and, in looking at the signatures, I find I have also signed that letter, so we are all clear. However, it is a public letter, so I am not sure we need to declare it as a particular interest. Lord Howell, you wanted to widen this out a little.

Q39 **Lord Howell of Guildford:** In looking at this question of the future, and what virtual proceedings we retain, I have to say, first, that I found Lord Judge's comments at the beginning of our session this morning profoundly interesting; I think he used the words—I do not want to misquote him—that our system of parliamentary scrutiny is not effective

at the present time and not good. It perhaps brings home the thought to all of us on the Committee that we are really looking at some fundamental weaknesses in the way our Parliament operates in the digital age, which were there anyway, which have been growing all the time and which have been hugely accelerated by the coronavirus crisis.

The public are now invited to look in on Chambers that are barely populated, with 1/10th or 1/20th of the membership scattered along the Benches. They are invited to look at our archaic voting procedures. I think we are one of the only Parliaments left in the world that does not have organised remote voting. They are invited to hear Ministers brush off questions with the well-known formula that those of us who have been gamekeepers as well as poachers, like you Chair, know perfectly well are formulas for avoiding, ducking and brushing aside questions. This is theatre and may impress the sketch writers, but is it really an effective Parliament? The answer, in my view, is most emphatically no.

My final question to both Baroness Walmsley and Lord Judge is: are we looking at the right thing? Is this an age for plenary Chambers, except for show and theatre and special occasions, and some dramatic votes? Should we not really be thinking about much more powerful Committees, equipped with much bigger staff and much more powers; able to summon Ministers, who at present can say, "I am busy, I am not coming"?

Are we not slightly on the wrong track in concentrating on trying to do better in the Chamber, when it is the Committees of the legislatures of all Parliaments that are now realising that is where the power lies? The media also realise that, fun though it is to see the give and take and point-scoring in the Chamber, the real power for controlling and supporting the Executive lies in the Committees.

The Chair: It is a big question, but we are running out of time, so I am going to ask people to be succinct. Lord Judge.

Lord Judge: The way in which the constitution has been developing for 10, 20, 30, 40 years has been increasingly, for a whole variety of reasons, to vest more and more power in the Executive. The way the constitution should develop in the future is to develop whatever processes there may be, whether by Select Committee or technology, to ensure that the Executive is better controlled and more accountable. I am afraid the answer to that will be whatever you decide as a Committee, or whatever you put forward as a Committee that will best achieve what I regard as the important end.

Baroness Walmsley: I certainly think we should retain the ability to have virtual facilities. We have cracked it really, I think, and although there are challenges, and the ability to hold Ministers to account is not as good as it was, in a future emergency we will know what to do. It brings into question some of the assumptions about moving Parliament for R&R. I certainly think frail and disabled people should continue to be able to participate remotely, and we should keep electronic voting, and retain the ability for witnesses to come and contribute virtually to Committees. I

think it will encourage certain busy people to agree to give evidence to a Committee who might not otherwise accept the invitation.

Lord Hennessy of Nympsfield: To underscore what Lord Howell was saying, the experience of pandemic Britain has placed a huge question mark and a huge question of competence across a whole range of national institutions and those who people them, including Parliament quite obviously as a primary example. Is it not the case that how we conduct ourselves during the pandemic—I think this has emerged very strongly from today's hearing—will be crucial to the way we are regarded as a House and a Chamber by the public in the future?

Also, does it sharpen the case for the Select Committees that Lord Howell was talking about? Do we need to revisit, with all due respect to the great work that was done by Lord McFall and his Committee on rejigging our Select Committees, the whole question of Select Committees, and sharpen and focus them, if that is going to be the cutting edge of what is our primary purpose as a House of scrutiny and knowledge?

Lord Judge: If we reach that stage, it will be more important, I suspect, to have some statutory arrangement by which the decisions and recommendations of a Committee such as this, or the Delegated Powers Committee, indeed all Committees, have a more direct lawful impact on the way the country works. At the moment, Committees make recommendations and the Government can completely ignore them. If you are going to have that as a focus, you need to ensure that there is a constitutional arrangement by which the Committee's views, recommendations and so on have force.

The Chair: That is a very big and long-term issue that we are all going to be looking at. Lord Judge and Baroness Walmsley, may I thank you both very much? You have been very generous with your time. If Members stay online, we are going to go into a second witness session. Thank you both very much for this morning.