



Select Committee on the Constitution

Corrected oral evidence: The constitutional implications of Covid-19

Wednesday 17 June 2020

10.20 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); 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. 5

Heard in Public

Questions 49 - 64

Witnesses

I: Lord Harris of Haringey, Chair of Labour Peers; Lord Hunt of Wirral, Chair of the Association of Conservative Peers.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Lord Harris of Haringey and Lord Hunt of Wirral.

Q49 **The Chair:** This is the Constitution Committee in the House of Lords. We are undertaking an inquiry into the constitutional implications of Covid and its impact on how we work in Parliament. Our witnesses today are Lord Harris of Haringey and Lord Hunt of Wirral. Good morning to you both.

You have now been able to see how Parliament is working and some of the impacts, issues and problems, the legislation that we have had to deal with, and how we have dealt with Questions and Statements. First, what are your general impressions of the challenges that we have been facing and the drawbacks and are there any advantages? Would you like to give an overall impression just to get us started?

Lord Harris of Haringey: The simple answer to your question is that the achievement is that Parliament has been able to continue. The Lords has been able to continue its normal role of scrutiny and challenge. I will come back to whether that has actually worked. One should pay tribute to the way in which we have managed to deliver virtual working so effectively and so quickly.

As we all know, the House of Lords does not normally move so fast on such matters. There is a tribute to be paid to the Parliamentary Digital Service, the clerks and so on one who have made that possible. I would also like to pay tribute to many of our colleagues who would not normally regard themselves as technologically at the cutting edge. Some admit to being challenged, but we have all tried to learn new skills with great rapidity.

The benefit has been that we have been able to carry on. The drawback is that there has been a real loss of spontaneity in the discussions we have in the virtual Chamber or now in the hybrid Chamber, and there is limited depth of scrutiny, perhaps for a variety of reasons that we may come back to, such as limitations of time and the speed of the change with which things are happening. That has been a real issue.

The challenges, excepting for the moment the technical issues of individual Peers, are that this is an unparalleled emergency, at least in our lifetime. There is a huge level of interest, and therefore a desire by all Members to pursue detailed aspects of what is going on, and I am not sure that the Lords has the—bandwidth is probably the wrong word in this context—capacity to deal with the ground effectively at a pace that is appropriate, given what is going on.

It has also highlighted the weaknesses of the existing mechanisms before lockdown and before we went virtual and hybrid. Ministers have often failed to answer questions in the past, but now it is more important, because the questions are very current and very real, and more obvious. It is also harder for Members of the House to do anything about it. I am conscious that Paragraph 6.14 of the *Companion* says that Ministers are

expected to be “as open as possible” and to give “accurate and truthful information” in answering Oral and Written Questions in the House.

I am not sure that many of my colleagues among the Labour Peers would think that was a fair statement of what actually happens. As the all-powerful Constitution Committee, you might want to ask why there is nothing in the Ministerial Code, as far as I can tell, about how Ministers should answer questions, and no expectation about being accurate and truthful—at least, not that I could find in a quick read—so all that we are relying on is what it says in the *Companion*, and I am not quite sure whose responsibility it is to enforce that. I shall stop there.

Lord Hunt of Wirral: I see this almost entirely in terms of challenges, a response to an unprecedented, unwelcome and extremely testing situation. The challenge is, of course, to do everything we can to protect the health of the staff of the House, Peers and Peers’ staff and to set an example to the nation at a time of lockdown, while also doing whatever we can to fulfil our function of scrutinising the work of the Government. The drawbacks are obvious, I think. As Lord Harris of Haringey just said, they include the loss of an esprit de corps, the helpful informal exchange in the voting lobby and so forth. The benefit, I will no doubt come to later, is the introduction of remote speaking and voting.

There have inevitably been limited resources, and the House of Commons, as the elected House, has rightly and understandably—if frustratingly, from our point of view—been prioritised. Against that background, the House of Lords was unable to broadcast its proceedings or to introduce remote voting as soon as many of us would have liked, but we are getting there.

I fear that the length of speaking times is now producing an unacceptable situation. I understand that it was suggested that the number of speakers just had to be cut, and that that was discussed and rejected by the Procedure Committee. The situation is consequently now rather rough around the edges, but nevertheless a broader sweep of people are now getting to speak. For instance, some people who tended not to intervene at Question Time before the pandemic because they found it difficult to compete in an open Chamber are now participating more not less, and I rather welcome that.

My final comment is to praise the work of Ed Ollard, the Clerk of the Parliaments. I reckon that his letter last Friday—I think it was his fourth letter—set out once again the extent to which the staff have responded to this challenging situation. He ended, if I recall, not by seeking any credit for himself but by saying, “We have reached this position due to the sustained and amazing hard work and dedication of the staff of the House”. I agree.

The Chair: I now call Baroness Fookes, who may want to follow up on some of those aspects.

Q50 **Baroness Fookes:** First, I agree with the point just made by Lord Hunt

about the work of all those involved in getting us going. Turning to questions, I wonder whether we could take a look at the effect of virtual proceedings on different types of business. We have already had something about Questions, but what about stages of Bills, for example, and any other examples that you might care to comment on?

Lord Harris of Haringey: The first thing to say is that committees—this one is an example—have demonstrated that they can work well and almost as effectively in virtual conditions. I have sat on committees during the lockdown period, as well as before the lockdown, and you slightly miss the body language and the raised eyebrows around the room, although, with everybody looking at all the members simultaneously, maybe we can get round that. Frankly, I think that committees have worked almost as well as they did in the previous circumstances, and there are some lessons from that for the future.

I mentioned the lack of spontaneity during Oral Questions and Statements. The real problem is the failure to follow up. As I think Lord Hunt alluded to, because there are lists of speakers we do not always hear from the Members with the most to contribute to the topic. The way the House goes round, we tend to defer to colleagues on our own side who are acknowledged experts in a particular field. That is not always the case, but most people try to do that. The House is often quite clear when it wants to hear from somebody, even though it may not be their group's turn, because they are the person who should be asking the Minister questions. That is all lost, and it is a problem. I do not know how we deal with that.

On Bills and SIs, I think the jury is still out. When I came into the House, I was told that a Committee stage should be like a conversation. Maybe I was given too lax an interpretation of how it should work, but I understood that it would provide an opportunity to go back and forth and really tease out from the Minister exactly what a clause was meant to mean and to make sure that the Minister fully understood any concerns. I am not sure that even the added flexibility in Committees is enabling that to happen.

Finally, I want to say one word—well, several words—about topical Written Questions. This was a good innovation in principle but, speaking personally, it has been a complete failure. I have used it twice. On the first occasion, my Question was responded to after three weeks instead of seven days, and no element of the Question was even addressed, let alone answered. Indeed, I have had to ask a series of subsequent Written Questions to try to get the answers, but I still do not have them. The second, which is outstanding at the moment, has received no response after four weeks. I understand that that experience is replicated among many colleagues. Therefore, we introduced a procedure that was sensible—to ask something topical and get a Written Answer quickly—but in practice it is not working.

Lord Hunt of Wirral: Inevitably, the big set-piece debates to which we are accustomed on the Floor of the House—Second and Third Readings

and so forth—have lost some impact. I suppose they have lost their sense of theatre. The experience is very different indeed. One is no longer in the same space as the Minister. However, the more detailed elements of scrutiny—Questions, Statements, Grand Committees and so forth—can operate relatively unscathed. I suppose that we have lost a certain amount of our characteristic style, but our substance has survived largely unscathed.

Remote proceedings do not seem to have had a negative impact on meaningful scrutiny by the House of Lords, nor on the extent to which outside interests are able to make approaches to Members of the House. I am in steady receipt of briefing papers and offers of personal briefings in connection with legislation, but—we may come to this in later questions—I was disappointed by the way in which the Committee stage of the Corporate Insolvency and Governance Bill was dealt with yesterday.

My final point—I am not saying this because I am appearing before you—is that the real success of Virtual Proceedings has been Select Committees. They, in particular, have worked well during this period by using video-conferencing technology. I have heard from witnesses who have participated in oral evidence sessions how favourably impressed they have been by how seamlessly everything has worked and by the lengths to which clerks have gone to ensure that they have been briefed, made ready for their submissions and trained to use the IT ahead of the sessions.

I will be very interested in what you conclude, but in responding to the question from Baroness Fookes I see it as appropriate to remind her that 41 years ago at 2.31 in the morning, I think with Lord Howell, we voted on setting up departmental Select Committees. Baroness Fookes spoke in the debate, as did Lord Beith. I remember the debate very well. That vote was a huge step in the right direction. I would like to hear what the Constitution Committee thinks should be the next step in that stage. I would like to see much more utilisation of Joint Select Committees, particularly in monitoring the work of government departments. That is where we could make a great deal of progress.

In summary, the message seems to have gone out loudly and clearly, and to have been received, that the House of Lords is still open for business.

Lord Howell of Guildford: What Lord Hunt has just said is music to my ears. There were also some strong supportive words from Lord Harris about the rise of Select Committees, which did not exist 50 years ago. We had the old weak Estimates Committee. Some of us urged that, in the age of a vast and expanding Executive and with the need for really effective scrutiny, we had to move away from the rumbustious Chamber into a more effective Select Committee system. That is what we did. Gradually the media realised its importance and it has been a huge success.

I would like to put to both our witnesses that in the papers supplied to the Committee earlier this week it is pointed out that many people regard the plenary Chambers of the Commons and the Lords as “political theatre”. Indeed, Lord Hunt mentioned those words just now. Some people say that it might be fun to watch, particularly for sketch writers, but it has never really been much good for detailed scrutiny of Ministers, because they have a formula for not answering and there are always rows and point-scoring, which obscure the real issue. Does that not point in a very important direction?

Also, I do not think that at the moment the public regard the pandemic as a partisan affair or a matter for point-scoring. For me, all that leads to a huge new question, which Lord Hunt has touched upon. The committee structure of both Houses may need more powers and more opportunity to influence and control calling the Government to account and, indeed, to influence the legislative pattern and procedure. We will come to that in a moment, but is there not a need to switch perceptions of what Parliament does from the usual plenary Chamber rows of the past to the working Parliaments of the future that will be far more effective both on television and indeed online in calling the Government—the growing Executive, with its vast agencies—to account?

Lord Harris of Haringey: I agree entirely with Lord Howell on this. I think we could do a lot more with committees. We are constrained by resources. We are constrained by the clerking resource and, currently, by the broadcasting resource, which limits the length of hearings and so on. However, the reality is that we could do much more detailed work.

That is not to decry the work of the Chamber, which is hugely important. The theatre does not have to be party political theatre. I can recall instances where a debate or discussion at Question Time has clearly had a palpable effect on government policy, perhaps not because it has been a party-political ding-dong between one side and the other but because it has demonstrated unanimity of concern and that has fed through. On occasion, you would slowly see the Minister’s dawning realisation that what they were defending stoically against all sorts of attacks was clearly nonsense and, what is more, there was a real danger to it, and them taking it back and thinking again.

You can replicate some of that in committee, but committees tend to work in rather slower time. One of the problems in the Commons has been the way in which some of the Select Committees have moved to a two-hour reporting cycle. They announce an inquiry, they have two hours of witnesses and produce a report, whereas the longer style of looking at an issue in detail, collecting a large number of voices and witnesses is, I think, more helpful, but that requires time and resources. It is something that, frankly, we in the Lords could do quite well.

Lord Hunt of Wirral: The House of Lords has always led the way in Select Committees. I recall that, when I was involved in government, the real nervousness crept in not when one was called before one of the House of Commons departmental Select Committees but, particularly

when I was Cabinet Minister for Science, being called before the Science and Technology Select Committee in the House of Lords. It was a scary experience—

The Chair: I can imagine.

Lord Hunt of Wirral: —because around the table there were the most brilliant minds; leaders in their own fields. I think we have sometimes underplayed our role. The European Union Select Committee has, similarly, been an example of how to operate Select Committees. Government now needs to be monitored much more closely by both Houses. I agree with Lord Howell that what we decided to set up on, I think, 25 June 1979 has proved to be brilliantly executed. As the Select Committee on Health has been demonstrating under Jeremy Hunt recently, Select Committees really can play a part in pushing through ideas and monitoring what the Government are doing.

I have always been a strong supporter of much more joint working between the House of Commons and the House of Lords, each tapping into each other's strengths. Our strength lies in the calibre of the individuals who make up the House of Lords, not just as a revising Chamber but as a Chamber packed with talent. We do not get that across forcefully enough.

Q51 Lord Sherbourne of Didsbury: I want to raise a wider question about how much consultation there has been between the Government and the Lords parliamentary parties in preparing for the new procedures in the pandemic crisis, not so much between the Government and the usual channels, which of course are the Front Benches, but how much Back-Bench opinion has been tapped into in this period.

First, in preparing for the new procedures, were Back-Benchers involved in the process? Secondly, to what extent is Back-Bench opinion being tapped into now in the light of the experience of the new procedures? How far is this being fed into the Government? What particular issues have arisen from Back-Bench opinion to be relayed to the Government?

Lord Hunt of Wirral: Lord Harris of Haringey, Lord Judge, Baroness Walmsley and I have been meeting under the chairmanship of the Deputy Lord Speaker to discuss issues. In fact, we have got into a routine of meeting every month. This has been a very helpful way of being able to communicate the views of Back-Benchers to the Deputy Lord Speaker, given that we chair or convene our own groups.

How effectively have the Government engaged with Parliament? How much consultation has there been? I think there has been a great deal. When I was preparing to give evidence this morning, I consulted my colleagues in the Association of Conservative Peers, and I have been overwhelmed with views, and they are all different.

In many ways, too many of them deal with remuneration. I have had a very strong broadside that the system is not working. People who want to be in the Chamber cannot afford to be there, because no allowance is

paid unless they participate. They can do that remotely, but they want to be in the Chamber. I got this very strongly from colleagues in our House who are from Northern Ireland. They just cannot afford to be present. So various representations are being made about the existing allowance system, but that is not, as I understand it, a matter for the Constitution Select Committee. It needs to be sorted out. Lord Norton of Louth ranged very widely across a whole spectrum. He concluded that everyone agreed something must be done, but he did not actually say what people wanted done.

However, I have found Ministers and their officials to be extremely willing to engage, very courteous and genuinely ever-mindful of their responsibility to respond to any concerns that I might wish to express, either personally or as chair of the Association of Conservative Peers. The informal cross-party engagement in which I am involved has continued much as before, only virtually.

Lord Harris of Haringey: As Lord Hunt has said, the chairs of the political groups in the Lords have regular discussions with the Senior Deputy Speaker. There have been very good efforts to communicate with all Members. We have had regular letters from the Lord Speaker, the Senior Deputy Speaker and the Clerk of the Parliaments, and that has all been helpful.

I am not part of the usual channels, but as chair of the Labour Peers I am in touch with our bit of the usual channels on what feels like a daily basis. I think those consultations have functioned well on the processes, despite the volume of change and the speed with which it has happened. The Commission and the Procedure Committee sound to me as though they have been in virtually continuous session to try to bring about all the changes that we have talked about. So I think that has worked reasonably well, although there have been the odd moments of friction, as I understand it.

Ministers' engagement has frankly been very variable. Some Ministers have offered briefing sessions, which in my experience and that of colleagues have varied in quality. Some are essentially rather like being in the virtual Chamber requiring questions in advance and it not being possible to come back for clarification. I have been to others where the Minister has engaged much more openly in a dialogue, although to be honest they have been on some of the more esoteric bits of government, so there have not been so many people in the virtual room.

The other thing that I have detected—I do not know whether it is a proper answer to Lord Sherborne's question—is that some Ministers treat responding to debates or even answering questions as a chore and have made little effort to engage with the matters under discussion. That was perhaps always the case, but it has felt particularly noticeable. I am tempted to start naming names, but that would obviously be inappropriate, but there are two or three examples where if I see that I am down to have a Question answered by some Ministers I almost feel it

is worth withdrawing the Question because it will never get a useful answer.

Q52 Lord Wallace of Tankerness: How effectively do you think Parliament has been able to scrutinise the Government's use of emergency powers during the pandemic? I think I am right in saying that the regulations relating to the wearing of facemasks on public transport in England were published on Sunday and enforced on Monday. Perhaps I am prejudging your answers. How effectively do you think it has been done? Do you think there are ways in which we could have improved how they are being scrutinised?

Lord Harris of Haringey: I think it has been less than satisfactory. The Coronavirus Act is very substantial. There were some excellent, but brief, debates about it in quick time when it came to this House. Even so, it had far less scrutiny than a Bill would normally have had, and there were no amendments or votes. Then we had an extended recess, which I think has been a real problem. As you say, regulations are changed, quite understandably because there is a lot going on, and it was implemented very quickly. It is almost that when we come to look at them, the moment has passed and there is very little opportunity to get a detailed result.

I have to say that I am still not clear why the existing civil contingencies framework was not used. That is an issue that you might want to look at, because that would have provided more of a regular review process.

The Chair: We have considered that point.

Lord Hunt of Wirral: I think Parliament has been able to scrutinise adequately the Government's use of emergency powers during the pandemic. Everyone has recognised the seriousness of the situation in which we find ourselves, and so long as Ministers continue to consult I am sure that broad consensus will endure. I have found Ministers to be very willing to listen and to engage constructively. I sense that the use of emergency powers is a 100% unwelcome necessity of which Ministers will happily rid themselves as soon as it is safe to do so.

Q53 Lord Wallace of Tankerness: Lord Harris mentioned the problem that we passed the Coronavirus Act and then immediately went into recess. Lord Hunt, do you think it is a problem that we were in recess for quite a long time when the initial regulations were coming up, and that there are better ways in which Parliament could organise its procedures to make sure that there is scrutiny in that situation? I hope it will not arise again in that form, but it could certainly arise in other forms when Parliament is in recess and important regulations have to be brought forward.

Lord Hunt of Wirral: Emergency legislation is never a pleasure, and inevitably it is never perfect. Given the pressure and the timescale, I think the Government did a good job with the Coronavirus Bill. My suggestion would be that greater use could be made in future of a rapidly assembled committee from the House of Lords, drawing upon the legal, medical and academic expertise that we have in the Lords, to help shape

legislation in its early stages. However, speed is of the essence, and delay would be unwelcome. As to the recess, it was inevitable at the time, but recesses should never mean that we stop work. Government does not stop and we should not stop either.

Q54 **Lord Dunlop:** To some extent this has been touched upon already, and Lord Wallace and Lord Harris have mentioned the problem of an extended recess. I want to ask about the safeguards on how emergency legislation is used—specifically, for example, the provisions for a 21-day review. To what extent do you think there has to be a compromise when Parliament is not sitting or where sittings are restricted? How might these laws or the parliamentary procedures to scrutinise them need to adapt?

Lord Harris of Haringey: Unfortunately, we have become rather too familiar with dealing with fast-tracked Bills in the past year or so, some of them to do with coronavirus. We have had a string of Bills that went through on a fast track to do with Brexit and so on. This is clearly less than satisfactory, because the parliamentary scrutiny is never so good. With something like the Coronavirus Act, which set a series of three-week stages, there clearly need to be parallel processes within Parliament for us to be picking up those issues. I am not convinced that it looks good for the country or is right for proper scrutiny of the Executive for Parliament to be in recess so much. It is possible for Select Committees to operate during recess, provided that authority is given. It should be possible, even if the House is not meeting four times a week, for the House to meet on a regular basis, even during a recess period when things are moving as rapidly as they are at the moment.

I want to make two other points. One is that, particularly in a crisis like this, scrutiny matters, not because we are trying to catch the Government or Ministers out doing something wrong or inappropriate, but because the posing of questions, the broadness of what is feeding into them, is likely to lead to better decisions and a more rounded outcome, and it is better in terms of the outcome for the country that we do it in that way.

For most emergencies, if you break down their different components, the response is pick-and-mix. There are things you need to do in a flood that you may also need to do in managing a situation in which there is no transport or where large amounts of the workforce have to be isolated or cannot attend work. The idea of using the civil contingency process to develop the pick-and-mix sections of the way you deal with an emergency and having them pre-scrutinised and ready to take off the shelf is something we might want to consider in future.

Lord Hunt of Wirral: I agree.

Q55 **Baroness Corston:** On the fast-tracking of Bills, what is your assessment of the way Parliament scrutinised the Coronavirus Bill, given that it was a substantial and complex piece of emergency legislation?

Lord Hunt of Wirral: I think I have already dealt with the Coronavirus Bill. I felt that the House of Lords could have responded, and we must

ensure that our Standing Orders allow us to do this by rapidly assembling a Committee from the House of Lords drawing upon our expertise to help raise the right questions and hopefully get the right answers.

We have lessons to learn from the parliamentary scrutiny of the Coronavirus Bill, and that certainly is one of them.

Lord Harris of Haringey: It was very difficult. It was an enormous Bill—some 260 pages, very detailed in places, covering a wide range. There was a good debate about it, and there were some good discussions, but in no way did it get into the detail that there would normally be for a Bill of that scale and complexity. The requirement, for understandable reasons, was to pass it within about 48 hours; I forget exactly how long we had.

Given that, maybe we should have some very flexible procedures that would enable a series of Committees to go away on the first morning and look at the Bill section by section, and then come back with some more informed comment. It seems that our procedures are not up to dealing at that speed with a Bill of that size and complexity. I do not say that the speed was not necessary, that it should not have been dealt with or that we should not have passed the Bill, but I am very concerned that whole chunks of it never had the attention that they deserved.

The Chair: Quite a few people want to follow up on this, not least because of some of the experiences of other Bills that have been fast-tracked.

Q56 **Lord Howarth of Newport:** I wonder what you think of the scrutiny of the Corporate Insolvency and Governance Bill, a vast Bill that has been brought in on a fast-track as necessary emergency legislation but which also brings in permanent dangers to technical, complex, very important areas of insolvency law. It went through all its stages in the House of Commons in one day, and the remaining stages, following Second Reading, in half an hour, so it was clearly not scrutinised there.

Here in the House of Lords, we are in the process of dealing with the Bill, but we are under strong pressure of time to complete Committee stage in one day. Therefore, there were huge groupings full of miscellaneous different topics. All this is made harder by the rigidities of the virtual scrutiny process. We have a rigid list of speakers that is formalised well in advance, a very early deadline for tabling amendments, no freedom in the debates for intervention, none of the conversational character of Committee stage that Lord Harris was talking about. Lord Hunt, you said earlier on that you were disappointed by the way the House was dealing with this Bill. I wonder what you both think.

Lord Hunt of Wirral: I agree. Several of my colleagues have contacted me to express their dissatisfaction, mirroring what Lord Howarth said. We must find a better way of fast-tracking Bills of this complexity.

I should declare an interest as I spoke at Second Reading and demonstrated that there were a number of amendments that had not

been properly considered in the House of Commons, and although I was not able to participate yesterday because I did not press the right button at the right time and did not get selected, I agree with Lord Howarth that we must just look at the procedures. It is not necessarily a matter of time. I think we are prepared to spend the time, but it must be time usefully spent so that we can then deal with the main issues. We need to look at our standing orders.

Perhaps we will come to this later, but if we are to continue with a hybrid House—presumably we will come on to that—we must ensure that we have the right facilities. Having only one virtual Chamber is hugely restrictive. I would like to see certainly a second virtual Chamber. I do not know whether the Moses Room could be changed into a second Chamber or whether there are other facilities that could be utilised. We need to explore better ways of dealing with such complicated fast-track legislation.

Lord Harris of Haringey: My problem with that Bill is that it is so portmanteau. I have the impression—I may be wrong about this—that yes, there are elements that are genuinely necessary and urgent; because of my external interests, I was being briefed on one of them. Like Lord Hunt, I was a bit too slow in pushing the button, but it was one tiny element that is necessary and urgent in the current circumstances. There is a temptation in departments to say, “Oh, we’re going to have a bit of legislation to do this. Now is the opportunity to put in all these other things that we have been working on for ages”.

Because of one of my other external interests, I have been alerted again to the possibility of something that, again, is a good thing and which we have been waiting for and want to happen but which might suddenly get bundled in with other pieces of legislation and fast-tracked. Although I would like it to happen in that instance, it is wrong. I wonder whether there should be a parliamentary mechanism that certifies which parts of a Bill genuinely require a fast-track procedure. I thought there was one, but it may no longer be quite as relevant.

It is an abuse of power by government to push all these other things through, which, although they may essentially be uncontroversial, are complicated and require a degree of detailed scrutiny and analysis and may not be quite right, along with the bits that genuinely need to be fast-tracked because of the situation that we are in.

The Chair: I think that is the point this Committee was making in its report on the insolvency Bill. We understood why we needed to fast-track some provisions, but we were not happy that long-term or permanent changes were being made that were, and still are, very complex. Your point about a legislative standards committee approach to deciding what is a genuine necessity for fast-tracking and what is not might be quite useful.

Q57 **Baroness Drake:** Everybody wants to ask about the insolvency Bill as it has been a good test of virtual scrutiny. Notwithstanding whether there

can be a better system for determining whether a Bill or its contents should be fast-tracked, we are in the reality of dealing with a Bill where scrutiny at speed means the inability to press and interrogate as one would normally in Committee.

One could feel palpably right across the House, not just from a single party or a Bench, that issues of major consequence for how the real economy operates could not be dealt with effectively, could not be answered and were being rushed through. There are some real constraints here, such as the capacity of the broadcasters and the number of Chambers that you can run simultaneously, not even being able to do two different groups of amendments at the same time because of the time allocation.

I am sure there are more fast-tracked Bills coming, given the pandemic and the emerging issues about trade agreements with Europe. Is there any way in which the procedures and the sheer capacity could be looked at, because some of these issues change the way in which commerce engages in the real economy so fundamentally that you could feel people getting so anxious?

People were pulling out of debates because, although they knew that this had to be got to, it was sheer madness to deal with issues of major economic consequence in this way. Given that we will not necessarily be able to stop fast-track Bills, it would be helpful if the way the procedures work on something like this could be reviewed to make some exceptional arrangements.

Lord Harris of Haringey: I agree.

The Chair: I see. Lord Harris is saying that he agrees, and Lord Hunt is nodding.

Lord Hunt of Wirral: It is a matter for the Procedure Committee, and I hope it will listen very carefully to what Baroness Drake has just said.

Lord Wallace of Tankerness: I think Baroness Drake and Lord Howarth have expressed the frustrations I felt at times yesterday evening and have asked the questions and made the point.

Q58 **Lord Howell of Guildford:** I was a bit surprised by the tone of earlier replies about Parliament's effectiveness during the emergency. There is a general view outside, and indeed in some of the papers that have been presented to this Committee, that the country is being governed by decree at present, as is necessary in the emergency. There is a widespread view that Parliament has not had much of a say in this at all. This is reinforced by the daily Downing Street conferences at which the media present their questions—if I may say so, extraordinarily feeble and inaccurate questions.

As Lord Judge told the Committee last week, it might be very much better if we had a committee or a series of rotating committees in both Houses day by day intensively examining, with a really large staff behind them, the whole process of the emergency powers in the Coronavirus Bill,

among many other pieces of legislation that have been not put through, or powers that have been taken.

These are all things that leave the public with the impression that Parliament has not thrown its weight into this at all. Most, or many, other Parliaments have developed strong but specialised coronavirus committees of real accuracy and intensity. We have not done that. We have fallen down lamentably on this, and I would like to hear some views that we need to act very quickly to put Parliament back in its right place as the scrutineer of Governments and the guardian of the people.

Lord Harris of Haringey: I think there is a real danger that we are replacing the primacy of Parliament—the idea that Ministers should come to Parliament to make Statements—with a press conference in Downing Street with soft questions, starting with members of the public, pre-selected and so on. That is not the way we should be dealing with issues of this importance.

Some powerful grouping that is scrutinising on a daily basis would be very helpful. I would like to see, certainly while there are daily Downing Street press conferences, daily Statements in both Houses that would provide us with a reasonably extended period to pursue the issues that have been raised. That seems to be a proportionate response to the very serious situation that we find ourselves in and the very significant powers which the Government, for entirely proper reasons, are taking upon themselves.

Lord Hunt of Wirral: I agree with Lord Howell that we need to evolve some new ways of dealing with the situation, but it surely must be up to the House of Commons to work out, if necessary through a Joint Committee, ways of dealing with this problem. I know that a lot of my colleagues find the press conferences from No. 10 very boring, with a very limited amount of additional information. Certainly several of my colleagues have said that it is a prime example of how questions are never answered. It is good to know from Lord Howell that the questions are all the wrong ones anyway. It is far better in a democratic society to have the House of Commons and the House of Lords ensuring that the right questions are asked and the right answers are given.

The Chair: I think that takes us to the future.

Q59 **Baroness Drake:** I am looking to the future, but not too far into the future, say the short to medium term. What further could Parliament do to be seen to operate effectively? What further procedural and practical changes do you think should be considered?

Lord Hunt of Wirral: That is such an important question. Personally, I have no difficulties with a hybrid House as we emerge from lockdown in carefully calibrated steps. Everything is all about risk and a sensible assessment of risk. We are a free society and we cherish our freedoms, but we have in the main accepted a temporary loss of freedom for the greater good to save lives and preserve the effectiveness of the National Health Service.

As freedom returns, many of us will have to start taking difficult decisions. Many Members of this House, me included, are in so-called high-risk groups. I am delighted that a number of colleagues have felt sufficiently emboldened to return to the Chamber, not least the Lord Speaker himself, but for many of us that would still be a high-risk option. The hybrid House, for the time being at least, ensures that all Members are valued equally and retain their opportunity to contribute. It is a hybrid House in necessarily hybrid times, and we should do everything possible to make sure that Parliament can operate effectively in the short term as a hybrid House.

Lord Harris of Haringey: I think the constraint at the moment is the extent to which we have sufficient digital and other resources to process the work. Ideally, there should be more opportunities for more detailed scrutiny, opportunities to come back and get clarification on points and so on.

I repeat the point that I made earlier: better scrutiny and more transparency are even more important in a time of emergency, because this is about faith in government. If the public feel that their Government have been properly tested, are answering questions and are able to answer questions, that is better for trust, but it is also better for the quality of decision-making because a full range of viewpoints are coming from different quarters.

If we were able to do more, I would like to see further investment—there have been rapid changes already—in our digital resources, and presumably our clerking resources to go with that, and an opportunity to spend more time on scrutiny and to come back and get clarification.

Q60 **Lord Hennessy of Nympsfield:** It has been fascinating to listen to your very interesting evidence this morning. Would I be right in concluding that you share my instinct that this pathogen that we are living under has put a huge question mark over the House of Lords as an institution? It is posing the question, very starkly in all sorts of way—big ways, little ways, and a combinations of ways—of what the House of Lords is for.

Particularly with regard to your answers on Select Committees, would I be right in thinking that you think this is one of those great moments? We have had all sorts of bursts of events since the Budget of 1909 that have made us look at Lords reform, but this terrible experience with the pathogen could be a trigger for genuinely productive and very substantial Lords reform across a wide range.

If you agree that there is anything in that, if I am right to think that you share my instinct on this, what are the next steps? We need a sense of urgency about this, as Lord Howell said so eloquently a moment ago. Would I be right in thinking that that is your instinct? Secondly, what do we do now?

The Chair: Well, that is a big question. Who wants to go first on that one?

Lord Harris of Haringey: The justification for there being a House of Lords, given that it has no direct democratic legitimacy of any real sort, has to be that it brings together expertise and experience that would not normally or easily be replicated in an elected Chamber. We are demonstrating at the moment that we can deploy that expertise and experience, through committees such as this and other Select Committees, in a way that would be difficult in other contexts. This comes back to the point that Lord Howell and others have made that an increased focus on the work of the House—detailed, analytical work by committee, bringing together a range of expertise—would be very valid.

I am concerned that the Lords is called into question by some people for precisely the wrong reasons. They would like to demonstrate our irrelevance and use the fact that in the initial stages some of us had difficulties with the technology and so on to suggest that the Lords no longer matters and that now is the moment to reduce its significance even further. Underlying that, there is perhaps a belief that they would rather not have the sort of detailed and analytical scrutiny that we have talked about.

If we are going forward, we should not throw away the concept of a physical Parliament. There is a need to interact with each other, which is not all about what goes on in the Chamber or committees. I am not a classicist or an Anglo-Saxon expert, but I think Parliament is based on the idea of parley—interaction and communication to exchange views and ideas. I quite like the convenience of virtual voting, but the act of physical voting is an opportunity to speak to colleagues; you know they are going to be around at that point. We all know that at the end of a Division Lobby, as we come out, there is a line of people waiting to meet or spot a colleague to have a quick word. That interaction between colleagues is very important as part of the process of making Parliament work.

Clearly, we have demonstrated that the virtual elements have huge benefit for those who are sick or infirm. I can think of occasions in the past when colleagues whom we knew were very sick either struggled to come into the Chamber to make a point that we all wanted to hear or were not there and we missed their contribution. This would be an opportunity sometimes to involve them in the future.

A Select Committee I am on terminated its work yesterday. We had a number of virtual sessions even before lockdown with witnesses from the USA and elsewhere, in which we started to use the technology we now use all the time. There is clearly a lot more that could be done in that way. We could demonstrate our increasing relevance by doing more of that and making sure we highlight the expertise and experience that resides in the Chamber.

Lord Hunt of Wirral: I agree with Lord Harris of Haringey. On his point about remote voting, we have discussed that for years, have we not? I suspect and hope that it will now be a permanent feature of our lives. Ever since we have been able to watch proceedings in both Houses from

the comfort of our offices, the packed Benches of legend have become an infrequent sight, and I think that trend will continue. I have been pleasantly surprised by the degree to which a virtual debate can replicate some of the advantages of being present in the Chamber. As and when the crisis tends towards its close, I am sure all our individual risk assessments will increasingly tilt towards attendance in person.

To come to Lord Hennessy's point, I think we sell ourselves short. We do not properly demonstrate to the public as a whole the talent and expertise that sits on our Benches. Despite the best efforts of the usual channels, whose ideas seem to get rejected by the Procedure Committee, confining people to one minute or two minutes—I have had a number of such debates already—focuses the mind, but it does not help us to advertise the talent on our Benches. We have to find better ways. Lord Hennessy referred to the comments I made about Select Committees. They are a very rich vein that we ought to mine a little more sensibly in future.

Q61 **Baroness Fookes:** I am interested in the idea of developing Select Committees. I put it to our two witnesses that we ought to make far more use of that system whereby you have a draft Bill considered by a Select Committee and looked at thoroughly before it reaches the formal stages of First Reading and so forth.

Lord Hunt of Wirral: I could not agree more. I had the opportunity of chairing the Joint Committee on the Draft Legal Services Bill, which was introduced by Lord Falconer. We went through a draft Bill first and made all sorts of recommendations—not all of which were accepted by the then Lord Chancellor, sadly. It was a really good way of ensuring that the best people from the House of Commons and the House of Lords scrutinised the Bill line by line.

We had tremendous help from the various professional bodies—I remember the Law Society of Scotland in particular giving us a dedicated analysis—and Sir David Clementi, who had done a review of the legal profession. There were a number of ways in which we could call witnesses and go through the draft Bill line by line. It was a really good way to deal with legislation; I am just sad that it has not been followed frequently enough.

Q62 **Lord Howell of Guildford:** I super-endorse Lord Hunt's remarks about Select Committees. It is worth remembering that the first ideas of these in 1970 were when people were saying that the whole governmental and state system was far too powerful and that the time had come for decentralisation and a parliamentary system of committees that could get hold of all the agencies, delegated powers, executive agencies, quangos and so on that were springing up. That was a correct insight, and the Select Committee system has grown mightily.

I will end with two slightly contradictory questions, I am afraid. The first is that one of the functions of Parliament is of course to sustain an Executive so that the Queen's Government can be carried on. When it

does not do that, we get into a right old mess, as we saw at the time of the Civil War in this country and, indeed, in the Brexit debates of the past few years. If Parliament tries to take control, it usually ends unhappily for everybody.

The contradictory thought is that if Parliament does not do its job at all, there is also unhappiness. The plain fact is that in this country the Government have far more control over the parliamentary and legislative agenda than in many other countries. Has the time not come for us to work out ways in which constitutionally we should see far more control of the legislative process and the introduction and processing of laws in the hands of the committees of both Houses of Parliament than in the past when the Government have simply called all the shots?

Lord Hunt of Wirral: Those are slightly contradictory questions. First, yes, it is the job of Parliament to sustain a democratically elected Government. We have to recognise that under the Fixed-Term Parliaments Act there is now not to be a general election until January 2025, and sometimes we have to remind ourselves of that. Between now and then, unless, of course, the Fixed-Term Parliaments Act is amended in some shape or form, I agree with Lord Howell that we need to develop a system. I fought the general election in 1970, and I remember it well. It was all about the number of quangos that had been populated by all sorts of individuals, and it became to some extent in my part of that election a bid to restrain and control quangos. We have moved on.

What I was seeking to do in answer to an earlier question is to say that the time has come for a new surge of what I would say are joint departmental Select Committees. I would hope that the Lord Speaker and the Speaker of the House of Commons could find some way of ensuring that those scrutiny committees draw talent from right across not only the House of Commons but the House of Lords. I am a strong supporter of Joint Select Committees, and I think there lies the future.

Lord Harris of Haringey: I agree that ultimately the Government have been elected and should have the opportunity to bring forward their programme. I have always understood the role of the House of Lords to be a bit like that of Walter Bagehot's monarch—to be consulted, to advise and to warn—and that our function is to ask the Government and the House of Commons to think again. If they genuinely think again and decide they want to do this crazy thing, whatever it may be, that is their prerogative, and I although I might disagree with individual decisions, that is the way it should be.

However, Lord Howell is right to identify that the nature of our procedures in this House, but almost more so in the House of Commons, as I understand it—a number of members of the committee have been Members of the House of Commons and know far better than I do—mean that in fact the sovereignty of Parliament is quite difficult to assert, even when it should be asserted.

If we remember that election is what gives the Government the right to govern and that we should not undercut that, we should be able effectively to require them to have second thoughts, to look at things again and so on. My worry is that perhaps the balance has gone a little bit too far in the direction that the Government control everything as far as this is concerned.

Joint Committees are valuable and have a role. I have seen circumstances in which House of Commons members of Joint Committees are not quite sure what the role and place of the House of Lords members is within them. We should be aware of that and we should therefore not lose our opportunity to bring together our expertise and experience in Select Committee, but I think Joint Committees, particularly where no party has an overall majority, have a significant role for the future.

The Chair: Thank you. Shall we go back to some practical and more immediate things? Lord Pannick, I think you wanted to follow up on some aspects of that and then Lord Faulks.

Q63 **Lord Pannick:** My question has already been touched upon. When the happy day comes when it is safe for us to return to Westminster, are there aspects of our hybrid remote procedures that it would be desirable to retain for the future? In particular, should we allow infirm Members and Members who have family care responsibilities or who are unable to attend physically because of travel difficulties during periods of bad weather to contribute to the Chamber and the work of the House remotely? I shall be very interested in your views.

Lord Harris of Haringey: I think I have already said that we should retain that facility. The question is how widespread we want that to be, because there is an importance in physical presence and physical interaction and the flexibility that that gives in debate. However, I would be very sorry indeed if we excluded Members of the House from participating—when clearly the House would want to hear from them because of their expertise—because of their personal infirmity at that point or the fact that they could not leave home because of problems with a relative or a member of the household, or simply because physically it was impossible to travel across the country. We need some constraints on the ability to operate remotely, but I would like to see it continued for those categories of people.

Lord Hunt of Wirral: Not just those categories of people. I think that remote speaking and voting should continue to be made available to Members of the House of Lords. As one colleague commented to me, we have been very nimble and supportive in keeping people involved, and I hope that that will continue to be the case as lockdown eases and many aspects of life improve.

I agree with Lord Pannick that there are many Members of the House with childcare responsibilities. We are a diverse House. I have spoken to colleagues with children of school age and they have strongly commended the staff of the House for everything they have done to

prevent a challenging situation becoming an impossible one. As one colleague told me, there is a great deal of kindness behind the scenes that is typical of the House, and I am very glad that Lord Pannick has given me the opportunity to put that on the record.

Q64 Lord Faulks: One of the features of this emergency which we ought to acknowledge is that there are other emergencies, but it is difficult to think of an emergency that not only has created the problems this Government face but has also meant that we are not in a position to debate the need for emergency legislation and the like.

However it has given us this opportunity to see how far we can function in a hybrid way. There are particular innovations, one of which Lord Harris has already referred to, which is topical Written Questions. I think his answer was they are all right in theory but absolutely hopeless in practice. I do not know whether Lord Hunt has a view.

One further thought occurred to me. Has the experience so far caused either of you to have any different thoughts about the repair and restoration programme and whether there may be some lesson to be learned from how we have been able to function?

Lord Harris of Haringey: There is a great danger that people will say that because things have worked reasonably well we either do not need to worry about restoration and renewal or that the decant arrangements could be much more rough and ready than was previously envisaged. I think that would be a mistake. Although I think we should retain some elements of hybridity going forward, as I think there is some value in that in quite limited circumstances, the norm should be that Members of Parliament come together to have the opportunity to talk among themselves as part of the process of informing their contribution to the formal bits of work that we do.

I am not sure that that works long term by these means, so I would be very concerned if the people who cannot face the idea of restoration and renewal and moving out of the Palace see this as an opportunity to put the whole thing off. The building is falling to bits. We may no longer be quite so aware of it because we are not going in, but the dangers remain. Frankly, we should get on with it. We have delayed too long.

Lord Hunt of Wirral: I strongly agree. In the nearly 50 years I have been in and around the Palace I have been watching it crumbling. It has put lives at risk. The sooner we deal with restoration and renewal, the better—I can hardly wait—but it should in no way affect our ability to conduct proper scrutiny of the Executive and to underline the benefit of having a revising Chamber.

There are all sorts of ideas, some of which I have tried to throw out. I can hardly wait to read your report, because there are so many opportunities for us to improve the way in which we carry out our work. Many of them are within our grasp, so we must not lose the opportunity that a hybrid House gives us to get the best of all worlds and prove what a valuable Chamber the House of Lords is.

The Chair: I think we can all agree that it a valuable Chamber, and I think we can all agree to say thank you to both of you for your contributions this morning, which will have helped us in our deliberations. We will report as soon as we can on certain aspects of the challenges that the House is facing. Thank you both very much.