



Select Committee on the Constitution

Corrected oral evidence: The constitutional implications of Covid-19

Wednesday 24 June 2020

11 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. 7

Heard in Public

Questions 79 - 90

Witnesses

[I](#): Sir David Natzler, former Clerk of the House of Commons; Professor Meg Russell, Director, Constitution Unit, UCL; Dr Hannah White, Deputy Director, Institute for Government.

Examination of witnesses

Sir David Natzler, Professor Meg Russell and Dr Hannah White.

Q79 **The Chair:** This is the Constitution Committee of the House of Lords. We are conducting an inquiry into the constitutional implications of Covid-19 and how Parliament has responded. Our witnesses in this session are Sir David Natzler, Professor Meg Russell and Dr Hannah White. Good morning to you all.

I start this session by asking you in general terms how well you think Parliament has dealt with the challenges in the way it operates. You have heard this morning about the attitudes of some people in the House of Lords, but can you give us an overview of how you think Parliament as a whole has responded to this situation?

Professor Meg Russell: This has clearly been a very difficult situation. Certainly in the early stages, Parliament responded admirably. It responded to a difficult situation very well. Indeed, to coin a phrase, we were somewhat world-leading at the early stages in the rapidity with which we got proceedings online. There was fantastic leadership from the Speakers in the two Chambers and a huge amount of work done by the staff behind the scenes to set up the hybrid Parliament.

There was also a lot of interaction between parliamentary staff internationally, which was a very good thing for sharing good practice, and we were seen as a world leader. With regard to the House of Lords, as far as I can see, that work has incrementally continued, with you settling into your new hybrid arrangements. Unfortunately, the situation in the House of Commons has been rather different, with the abrupt ending of the hybrid Parliament, which has been very problematic and somewhat chaotic and has caused a lot of bitterness in that Chamber.

Sir David Natzler: I agree with what Meg has said. The institutions—certainly at the Commons end, which I am more knowledgeable about—were tremendous. The House of Commons Commission in particular, which has no role in this, stepped into a governance vacuum as a means of bringing together the various bits of the House so that it could proceed more or less with unanimity. As Meg said, it is sad that in the last few weeks that has been lost, along with the idea that the House was presenting a good example to the nation of a managed return. I am afraid it does not look so managed as you look back over the last three weeks, although it may have reached a plateau now.

I would like to say, as many of you have done, that the staff of both Houses, the Parliamentary Digital Service and the AV—audiovisual—people have been absolutely fantastic. I think it has been recognised around the world how amazingly swiftly they have reacted.

Dr Hannah White: I agree with much of what has been said already. Initially—and appropriately, given its role—Parliament's response mirrored that of many citizens in the UK in coming to terms with the seriousness of what was going on, significantly adapting the way that it

worked in order to adhere to what the Government were asking citizens to do, and everyone becoming very conversant with online platforms which most of us had barely heard of a few months ago. I think it was particularly positive, at least initially, that really clear emphasis was put on parity of treatment for Members who were participating online or in the Chamber.

As Meg has said, in many ways the UK Parliament's response has been better than many other parliaments have been able to manage. I know your Lordships have been taking evidence from witnesses who have seen it all at very close hand and can identify many flaws, but in many ways you should be congratulating yourselves on the effectiveness of what has been done and how quickly.

Again, though, to echo my colleagues, I think it is regrettable that in recent weeks the Commons has regressed on many of the innovations that were brought forward. I do not find the various different reasons that have been given to justify that terribly convincing. In the case of the Commons I really think it is premature, because while the Government have said, "We need to demonstrate to the public that we're doing business as usual and that Parliament is back", in fact it was really powerful for the public to see parliamentarians doing their jobs from home, adapting and having to make judgments, like everyone else was being asked to do, about whether to shield or travel, whether they needed to go into work and how they could operate if they did not. That was a really powerful picture that Parliament was putting forward and which the Lords is continuing to put forward but the Commons is now not.

Q80 **Baroness Fookes:** What should the priorities of Parliament be during this crisis? In particular, what core business should be considered? Perhaps we should consider each House separately in this context.

Sir David Natzler: How nice to see you. I think you can work this out for yourselves. The point is that it should be left to the Houses to work out the priorities and not left to Ministers. I am not sure they will disagree with that. Obviously you must cope with the legislation, primary and secondary, which Ministers feel they must introduce, but both Houses must continue to scrutinise in the way that you think best and to challenge, question and legitimise in the eyes of the public what is going on.

The one thought I had is that it is not helpful to have other people telling the two Houses what their priorities should be in these circumstances, which, because of the structures, may tend to be what happens.

Dr Hannah White: I entirely agree with that. I would just add a couple of things—notwithstanding Sir David's injunction not to tell you what you should prioritise—which I do not think were prioritised and to which more weight could have been given.

Certainly in the Commons there was a sense that the priorities of Back-Benchers had slipped down the pecking order because the Front Benches were working very closely together to prioritise legislation and so on, which, as Sir David said, was appropriate. I do think there is a role in these circumstances for debates initiated by people other than the Front Benches in order to ensure that the concerns of constituents, the public, experts and so on are raised.

The other thing that has not been prioritised, which is regrettable from the Government's point of view, is proactively briefing parliamentarians about the progress of the pandemic. Obviously there have been some Statements, but the Government chose to prioritise the daily press conferences, and I think they have potentially missed a bit of a trick there.

In terms of the process of how Parliament operates in a crisis, the first principle should be that Parliament should always try to sit, and the best should not be the enemy of the good in enabling that to happen. Parliament should be sitting and should be seen to sit, so the broadcasting element is very important. Those are the sorts of principles to bear in mind in a crisis situation like this.

Professor Meg Russell: I agree with much of what has been said. If you look at the way parliaments around the world have responded to the crisis, a common feature has been the slimming down, at least in the short term, to essential business, by which I mean coronavirus-related business. That has been the pattern in lots of countries, such as Germany, France and New Zealand. The Inter-Parliamentary Union has a good summary of this trimming back to essential business.

I wrote a piece jointly with Ruth Fox from the Hansard Society that was published during the Easter Recess on 14 April in which we made suggestions as to how Parliament should respond. We accepted that it might be necessary in the short term to suspend some kinds of business, like Private Members' Bills and Back-Bench debates in the Commons, but we also said—this is another common theme around the world—that if you are making decisions about excluding certain business, it is very important that your decision-making process on that is itself an inclusive one and that it is consensual as far as possible, and certainly cross-party.

Given what Hannah has just said, it needs to include Back-Bench voices as well. The longer this situation goes on, and it has gone on probably for longer than many of us expected, the more problematic it becomes to suspend those kinds of business, and you need to find ways, through the technology if necessary, to begin bringing it back.

Q81 **Lord Sherbourne of Didsbury:** I want to talk about how effective the House of Lords has been able to be in its primary function of holding the Government to account during these difficult times. I think we all agree that the IT has been extremely good, and I take that as a given, but I would like your views on where you think, in the present situation, Parliament is effectively holding the Government to account and where it

is failing to do so, especially given that these hybrid, and mostly virtual, proceedings are likely to go on for some time.

Sir David Natzler: I do not see the logic of the proceedings now being hybrid or virtual, having moved away from this strange category of “virtual” proceedings, which you started with. They were not proceedings at all; they were just a sort of not-televised debate. But now you have moved to hybrid proceedings, which are fully effective, and I do not think that that need make your holding the Government to account any less effective. You are doing so through your analysis and by voting on legislation in particular, as well as through, although perhaps to a lesser degree—you might come on to this—a raft of Written Questions. You are doing so by the same means that your House has chosen to do it anyway, whatever the means by which it is transmitted to government, and I cannot think that that has been greatly changed.

The one great success—I think it is a success, but you will be better placed to judge it—is the Secondary Legislation Scrutiny Committee. I am sure that you have followed it closely, but right from day one it has put on its website a list of all the coronavirus regulations, with explanations. It has been engaged in correspondence with government on things like the regime in young offender institutions. It is a really good resource for other people, whatever they are interested in, but hopefully it also reminds the Government that, even if other people are not looking at all the 100-plus instruments, that Committee, week in and week out, seems to be doing so. I was worried that that might fall by the wayside. Obviously, the plenary is not really well positioned to examine the inevitable flood of regulation.

I think that you are perfectly capable of holding the Government to account, either virtually or not virtually, with the same structures that you have always used and have found influential.

Professor Meg Russell: On the effectiveness of government scrutiny, in a sense it takes two to tango. Some things have been quite difficult for both Houses to deal with. We have already heard reference in this session and the previous one to the daily press conferences, and we have heard several complaints—I am not sure whether Lord Fowler has said similar things, but certainly the Speaker of the House of Commons has complained several times—about statements being made outside Parliament before being made inside Parliament. It was refreshing to see yesterday the Prime Minister making a Statement to Parliament rather than in Downing Street about the next stages of easing the lockdown. It was also refreshing to see an end to those press conferences. Hopefully, now, more of that business will be taken inside Parliament, which I think should have been the case from the start.

The other thing that was very much a topic in your previous session, and you might want to come back to it later, was emergency legislation. In terms of statutory instruments, the figures that Baroness Smith quoted in the first session fitted with those from the Hansard Society. It has something called the Coronavirus Statutory Instruments Dashboard,

which is a very good resource. I looked at it yesterday and it confirmed that there have been 111 statutory instruments, 96 of them under the made negative procedure. I think that only 21 of them had conformed with the 21-day rule, whereby there is a 21-day gap between their laying and their coming into force. That makes it quite difficult for Parliament to offer proper scrutiny. There are things that come into force, often over a weekend, before Parliament has had an opportunity to look at them. I do not know whether that is a criticism of Parliament. As I said, it is a two-way street.

Dr Hannah White: I would just add, to summarise my colleague's comments, that it is a mark of success for your Lordships and the Commons that it is not really technical constraints that are holding things back at the moment. The difficulties in holding the Government to account are more to do with the constraints on government when operating in a crisis—the bandwidth constraints and so on—and the choices being made in government about how to engage with Parliament, rather than with parliamentary scrutiny itself.

I know that this has come up in previous sessions, but the role of Committees has been particularly significant. Particularly in the Commons, it was really significant that more Committees sat in the recess when Parliament was not able to hold the Government to account in the early stages of the crisis. Operating online actually made that much easier. It was a positive benefit, because Members did not have to come to Westminster; they could participate from their constituencies.

Q82 **Lord Wallace of Tankerness:** Are there any aspects of the virtual or, probably more relevantly, hybrid proceedings that you feel it would be valuable to retain at the end of social distancing, when we are able to get back to what one might describe as “normal”—if that can ever happen again? That might be different for the Commons and the Lords, given that the Commons has already gone back, but are there any types of behavioural changes that might last in each House?

Sir David Natzler: in the Commons, what has already stuck is the listing, which of course you have had in the Lords anyway—in other words, people knowing who—

The Chair: I am sorry, I was nodding and agreeing with you.

Sir David Natzler: I find that one must avoid all movement. The listing has already stuck and, curiously enough, the Commons is now listing speakers, even for substantive business, where there is no virtual participation. That has always been in the gift of the Chair and it is a cultural change that has come about.

I think that what the public might like to see in the way of behavioural change is civility. To me, the only benefit of those very stilted, sometimes hybrid and virtual, proceedings was mutual civility. It may be boring for Members to be stuck in their kitchens and unable to groan and mutter, but my impression from a very small cross-section of the population is

that many people rather liked it. They could hear what the Member speaking was saying and Members were allowed to finish a sentence without mockery or interruption. Whether—if and when, as you said, everybody ever comes back—they all say, “Gosh, that was really nice. I’ll keep my mouth shut if I’m not being invited to talk”, only time will tell. Civility would be wonderful, would it not, if it were restored?

The Chair: Some people enjoy the cut and thrust, but I think there is a balance to be struck.

Dr Hannah White: I would like to make two points. In my view, keeping an ability for committees—if not entire committees, at least some members of committees—to participate online has tremendous advantages in increasing participation. In the Commons—I believe that it is less of a problem in the House of Lords—a common problem is that only three or four Members might be able to participate in a session because of their numerous other commitments, which might mean that they are away from Westminster. Enabling those Committee members to participate would have a positive impact on scrutiny. It would also increase the extent to which evidence could be taken from witnesses remotely. That would increase the diversity of witnesses, because people who could not otherwise get to Westminster for whatever reason would be able to participate.

While, for most of us, participating in these types of proceedings online is novel and something of a trial, many younger people, who you might want to take evidence from as witnesses, are much more digital natives. They are much more used to participating online, they are much more used to engaging online than the rest of us, and they may find it a much less daunting process. You might find a different quality of evidence from those sorts of people. So that needs to be retained for committees.

I echo what was said by your previous witnesses about how for some Members of both Houses—I know it has been abolished now in the Commons, but I regret that—retaining an ability to vote remotely would be appropriate as it could increase the diversity of people who are able to participate in proceedings of both Houses.

Professor Meg Russell: David has given you a lovely word, “civility”, and nobody could disagree with that. But there is, as you say, Chair, a balance to be struck. There are obvious things that are lost, such as spontaneity, which have already been referred to. One downside of it all being so civil is that you cannot get a sense of the mood in the room about how your speech is going down and whether people agree with you. That must apply in committees as well as in the Chamber—the ability to have sideways glances, and so on. It is much more difficult to chair a committee in these circumstances than it is when everybody is gathered. So there are definitely downsides.

I agree with Hannah that there could be benefits to retaining virtual proceedings in committees, particularly for witnesses. That has been coming for years and it is a good thing that it has been sped along by this

process. It enables people to participate from different parts of the country and even different parts of the world, which is a definite bonus.

I am more concerned about continued virtual participation by Members in both Chambers. Virtual participation at the start of this crisis was introduced essentially to uphold one of the most fundamental principles of Parliament: equality of rights and participation. That is a fundamental democratic principle. Some people would have been locked out if they had not been able to participate remotely, so that was a good thing, and that is part of the problem with the way the hybrid system in the Commons was ended.

In the future, however, there is a danger that if we look to permanent patterns of virtual participation that will be in breach of that principle of equality, and you could end up with a two-tier system with some Members who are present and some who are never present. Another thing that has been lost in this process is the ability to have all the essential informal conversations that happen around the edges of parliamentary proceedings all the time. If those who are absent are not party to those informal conversations and are not getting socialised with members of their groups and other groups, an awful lot would be lost.

In the Commons there is a danger that some Members would feel tempted to spend all or most of their time in their constituencies. We will have to have a real debate after the crisis is over about the pros and cons of continuing virtual participation.

Dr Hannah White: I will come back on that point, because it is an interesting one. In the medium and long term, it is really important that your Lordships and the House of Commons think about having a debate about the merits of meeting in person and online.

It is not just a question for you. By definition, the vast majority of you are people who have chosen, and are able, to participate in politics as it is currently configured. A whole lot of people in the country might wish to participate in politics but cannot because it requires you to come to Westminster. I do not disagree with what my colleagues have said about the importance of meeting in person, but many—or rather most—parliaments meet less frequently than the Westminster Parliament, and there is a real question about whether it is necessary for every Member of Parliament to be present all the time, whether the diversity of views in Parliament might increase if it was possible for people not to have to travel to Westminster as frequently, and whether there could be a wider conversation between you and the public about what they want participation in their Parliament to look like. That is a really important thing for all of you to think about.

The Chair: That is a big question.

Q83 **Lord Faulks:** I was very interested in what Professor Russell said about witnesses before committees and how the move had been for some time to allow them to give evidence remotely. Is that a slight risk? While you

are all very much helping us in our inquiry and it is not really necessary for you to be there, if one was talking for example about getting Sir Philip Green or the Murdochs before a Select Committee, is it not pretty important that they are actually there physically?

Sir David Natzler: With regard to the Commons, witnesses' ability to give evidence is not new; as Meg said, it has been going on for a long time. The preference is to see the witness actually there, because, as you all know—the screen is full of QCs—you want to see the behaviour of the witness and to get a bit of a feel of what they are like. A Select Committee also feels better that way; it is better than just talking heads.

However, it has always been possible, so I do not think there is any suggestion that witnesses from now on will not be able to give evidence remotely. It is a question of money, investment and the technicalities of it, particularly if the committee is not remote—in other words, if its members are all sitting in a committee room. To hear evidence from someone on a screen is not easy; I have done it, and it is awkward. We have done it for years, and I have given evidence to other parliaments that way.

We want to differentiate between members and witnesses. However, if the committee is happy to say, "We'd rather have Mr X from New York than not have him at all", which is usually the choice, that is up to the committee. In an ideal world, it should be made easier for it to be able to make that choice.

Professor Meg Russell: This conversation is illustrating very nicely how there are some huge dilemmas at the heart of all this, and we must not just blunder into some new way of working. I agree with Hannah that we have a lot on our minds at the moment, but we should be thinking ahead and thinking through the options very carefully before we make any long-term changes.

Q84 **Lord Howell of Guildford:** When it comes to what works well and what should be retained, all your answers and most of the answers of our previous witnesses this morning point in the same direction: that the committee system works reasonably well—obviously, it can be improved—and that the plenary Chamber provides some enjoyable viewing but has limited effect at present; it is not an enhancing or enlivening pastime at all.

Does this not mean that your longer-term thinking should be entirely or heavily focused on how Select Committees can be given greater powers over the legislative process and other aspects of government, as is the pattern in many other democracies around the world?

Dr Hannah White: You are right that the tenor of our answers is that committees have been playing a very important role. There is always the question of whether their powers are adequate, and the question, which I think is good one, of the extent to which the Government pay attention to committees and whether they need to pay attention.

There, you have the time-honoured problem of what Government would want to increase the powers of committees if it will make committees more troublesome. I do not disagree that it is a really important thing to think about, but there is also the question of process and how you would get there. Looking at other legislatures, in the Scottish Parliament, for example, the concept was to make committees more powerful because they would look at legislation and do the scrutiny stages of legislation as well as policy scrutiny. That is also the case in many other legislatures.

There are problems that arise from that, such as in the influence of whipping that extends beyond the role of whipping that there would normally be for legislative scrutiny. It extends into the policy scrutiny side, and some people think that it can make those committees, which in theory are more powerful, less effective at policy scrutiny, because the power of the Whips is greater. I am not saying that that would be such an issue from your Lordships' point of view, but it would certainly be a concern on the Commons side.

Sir David Natzler: This is such a huge question, and we have been arguing about this for the last 40 years. The question is whether what has happened in the last three months has changed people's views on the plenary/committee balance. The fact that Select Committees are seen as having had a "good" virus event and that they have performed well should not blind one to the other argument about the primacy of the plenary and, particularly in the Commons, the jealousy of Members not on a particular Select Committee who do not particularly see why the 11 or 13 people who happen to be on the Health Select Committee, for example, should be empowered to decide, say, the minimum distance between people. I just do not think that that would work.

I am very glad that Select Committees have indeed done well. I would give just one caution: they have questioned very well but—it may just be my idleness in retirement—I do not remember much of their reports. They have been very good at getting in the Ministers and the experts and asking a lot of intelligent questions that are watched by the journalists and then conveyed through the media. That does not mean that they are the obvious place to come up with solutions to something that commands general support.

Professor Meg Russell: I agree with the general view that committees are a good thing and should be strengthened. I completely agree with Lord Howell that we are a quite a plenary-focused Chamber in international terms; many other places are more committee-focused and are seen as stronger parliaments.

But I think it is an exaggeration to refer to the plenary just as theatre. The plenary is a very important venue. If, for example, the Downing St press conferences had been shifted to somewhere else, where would you have wanted to shift them to? I would have largely wanted to have shifted them to the plenary Chamber.

My work has emphasised the extent to which Parliament's power is exerted in subtle ways. One of those subtle ways is simply through requiring Ministers to explain things on the record in a public forum. They have to be ready in the plenary for questioning on anything and everything from any direction. Obviously speakers' lists mute that to some extent, but that is the principle of the plenary. It is something that people say particularly about the Lords, where you can have an expert on anything popping up and asking you a penetrating question. It is a terrifying environment for a Minister. That is more than just theatre, so again there is a question of balance between recognising the value of committees and what they can do but also recognising the value of the plenary.

The Chair: Let us move on a little.

Q85 **Lord Dunlop:** Can I come back to remote voting, which Dr White has already mentioned? Our colleague and former distinguished member of this Committee, Lord Norton, posed a question in a recent blog: "Voting electronically is easy, but should it be?" The thrust of his argument was that Members can vote and thus potentially affect legislation with a lower level of engagement than if the House were meeting normally and physically. Could I ask each of you for your views on the benefits and risks as you see them of remote voting? Do you think the Lords should retain remote voting at the end of the pandemic and social distancing?

Dr Hannah White: We are probably fooling ourselves if we think that when Members vote in person they are all entirely engaged in whatever has gone on in the Chamber. Certainly in the Commons, one issue that the usual channels had with the idea of a remote voting system was how they would be able to convey to their Members which way they were supposed to vote if something had changed in the course of debate. It really was not the Members themselves making that decision.

This is possibly at risk at being slightly overdone. Equally, I know that the Leader of the House of Commons said that he fundamentally objected to people voting while they were taking a walk in the sun. To me, having Members who have other priorities to balance against their need to be physically in the Chamber is not necessarily a bad thing.

The Institute for Government looked at voting in the Commons and found that, in a one-year period, Members had spent 4% of the time that Parliament was sitting voting—almost one-twentieth of their time just walking through the Lobbies. Although there are many benefits to the social contacts that happen when you walk through the Lobbies, as has been well rehearsed, it is a lot of time that could be spent on something else.

So remote voting is more efficient. Obviously, in the context of a pandemic, it allows for less interaction between Members, so it is good from a health point of view, and I think I am right in saying that it also requires fewer staff, so from those points of view it is very good. It also largely means that greater numbers of Members participate in each vote.

On the other hand, as you have well rehearsed, there is this problem of less interaction between Members.

On balance, I end up thinking that, in the longer term, I would like to see remote voting available to Members who for health reasons or another reason that required a good justification were not able to be present. The benefits of those people being able to exercise their democratic role in voting at all outweigh the possible risks of what they might be doing when they are casting their vote.

The Chair: We will run out of time if we are not careful, so both the questions and answers will have to be a bit tighter, please.

Sir David Natzler: Let us be clear what we mean about remote voting and what the alternatives are. The question is how remote? Are you willing to just let people vote anywhere? The park is an irrelevance that was brought in. The question is whether, for example, those of you on international delegations would be able to vote when you were in Strasbourg, the OSCE or the equivalent.

Hannah mentioned good justifications; I think that was the phrase. I am afraid that that is the problem. Chair, as a former Whip, you will know, every Member has a very good reason not to be at Westminster at any given time—and they are good reasons. Some are health reasons, but not necessarily their health; it might be the health of their loved ones, or they may be attending a constituent's funeral, which must occur daily. There are reasons why they do not want to be in Westminster but they still want to register their vote.

I do not know how you square this circle, but you have to be realistic as to the categories of people. As you work down from the extremely ill to the merely rather idle, at what point do you draw the line and, more importantly, who draws the line and who says whether they are to get a remote vote?

This is the same issue confronting the Commons—rather privately, I think—with proxies. As you know, the solution that the Commons has gone down is to have proxies on an industrial scale. I think there are now over 160 Members casting their votes by proxy, which is a Lords procedure from the Middle Ages that we have revived. That is fine, and they have to undertake to the Speaker that they cannot come for health or Covid-related reasons, although I have to say that, if you look at the list, their situations obviously vary from day to day. That is the best way I can put it.

I do see Hannah's point: there is an advantage in some people being able to vote when they are not able to be at Westminster but they want to register their vote. But, as I say, you also have to allow for people who want to abstain. Again, Ann, you will remember Frank Maguire, who abstained in person all those years ago.

The Chair: Indeed.

Sir David Natzler: People thought that was funny, but he was making a very strong point. He wanted to say that he did not support the Government, but he still wanted to show that he was not just sitting in Franks bar in Fermanagh; that he had come to do that.

That is a very long answer, but it is a very complex behavioural, not technical, issue. It is also about looking for the best way that Members can participate while still ensuring that the Whips do not have complete control of the outcome of votes.

Professor Meg Russell: I do not want to repeat any of that. David and Hannah have made very important points. David asked what we mean by remote voting. It is also important to say that it is a good thing compared with what? I tend to be a bit of a traditionalist and see the benefits of the informal politics around the fringes of the Lobby and so on. But compared with the proxy voting system that has been brought in in the Commons, the remote voting system was far superior. It retained a very important principle of individual Member rights, which has always underpinned the system at Westminster.

We now have a situation where 80% of proxy votes have gone to Whips. One thing I was proud of with the way we had adjusted to the virus was that, unlike some parliaments, we had not shut out some Members and had not strengthened the party machines. The move to proxy voting, while bringing Members back in, has strengthened the party machines.

There is another interesting consideration in your House, which is that it is very meritorious to bring lots of Members in who cannot normally participate; but your voting numbers have gone up very markedly. The House of Lords Library has produced a briefing that shows that, of the over 2,000 Divisions that there have been since 1999 and the big reform, there have been 35 with over 500 Members voting. Five of those have taken place in June under the remote voting system. You are bringing in more Members, which might be good thing but it also requires careful thought because it is changing the dynamic. The House of Lords, unlike the House of Commons, has always worked on an expectation that daily participation falls well short of membership. If that changes, it could have profound consequences.

So, again, you need to think very carefully through the long-term consequences of keeping some of these arrangements. It does not mean that you should not, but you do need to think it through.

The Chair: Thank you very much. We will have to speed up a bit otherwise we will not get the questions in. If our witnesses do not want to answer every question or just want to agree with each other, that is fine. I ask our questioners to be brief as well. Lord Howell is first on the quick-fire list.

Q86 **Lord Howell of Guildford:** How effectively do our witnesses think the Government have engaged with Parliament during the pandemic in managing the business and agreeing procedural change, as well as the

flood of regulations and decrees and so on that have come through?

May I add to that? It has been observed that our Government control what goes on in our Parliament very much more than in many other democracies. Are we looking at something really quite deep in constitutional terms that needs changing?

Professor Meg Russell: Yes, I believe that we are. You have hit the nail on the head, particularly with regard to the House of Commons. We referred at the start to how well the House of Commons, as well as the House of Lords, was doing in the early stages and the fact that there was an awful lot of consensus; David mentioned the role of the House of Commons Commission in brokering agreements to get procedural change, and the Procedure Committee and the Speaker were very active. There was wide cross-party agreement when the hybrid arrangements were brought in. That is all on record in the House of Commons.

However, the fact that the Government have such control in the House of Commons meant that the Leader of the House could simply fail to bring forward a Motion to renew those arrangements, against the wishes quite possibly of a majority of the House—certainly against the wishes of his shadows, who spoke very strongly against it before the Whitsun Recess and again when the House came back after that Recess.

That vote on 2 June on the principle of going back to physical proceedings, from which 200 Members were excluded, many because they were shielding, is something we should be ashamed of. There should have been a vote in which everybody could participate before that Recess. All of that flows from the fact that the Government have such a lot of control of procedure and the agenda in the House of Commons.

I was the specialist adviser to the Wright committee in the House of Commons years ago. David was its clerk and might want to add to this. One of the core questions then was about the extent of government control. We recommended the Backbench Business Committee, which happened, and the changes to the Select Committees, which happened.

There was also a recommendation for a House business committee and that the Commons should get control of its own agenda and vote on its agenda every week, and that never happened. That shows up the flaws in the current arrangements. It is quite striking that, in the Lords, things have been more consensual, as far as I can see. That is partly by necessity, because the Government do not have a majority, but you also have those mechanisms that back up the fact that the Government do not have a majority. You have forums in which you can get cross-party agreement, which many other parliaments have. It looks to me as though it has gone much more smoothly in the Lords than in the Commons, and that shows that something needs to change.

The Chair: Thank you. I can see that the other two witnesses do not want to add anything urgently.

Q87 **Baroness Drake:** I turn to emergency powers and a question that has

three elements. Do you think Parliament has been able to scrutinise adequately the Government's use of emergency powers during the pandemic? Is there a case for reviewing the safeguards on emergency powers? Do these laws, or the parliamentary procedures to scrutinise the use of emergency powers and hold the Government to account, need to change?

Sir David Natzler: I am not an expert, obviously, but I cannot imagine a Parliament that is able to scrutinise emergency powers, even if the Government of the day were particularly keen that it should. There was no evidence that the Government were particularly keen, given the way the Coronavirus Act set up its regime of statutory instruments, particularly the made negative procedure. They wanted to be able to put out the regulations, for them come into force immediately and then to require either no parliamentary assent or to be subject, much later, to a prayer. I do not think that is surprising; I guess the same thing happened in 1939 and 1914. The Government do not want Parliament to be constantly scrutinising them.

I mentioned the Secondary Legislation Scrutiny Committee. If the Government had said, "We're bringing in this Act urgently and we'll have to bring in masses of regulations", I am not sure there was time for either House to set up any new mechanism that could have dealt with it. The existing mechanisms did their best; I cannot see how they could have done much better in the circumstances, especially as the House immediately adjourned on 25 March, I think it was, and did not come back until the middle of April.

Dr Hannah White: I agree, but there is a time factor here. A lot of the speed with which government brought in emergency legislation to begin with was undoubtedly necessary, and there was a high degree of consensus about it, but as time goes on in crises like this and in other possible crises, that justification diminishes. We have seen examples more recently of secondary legislation which perhaps need not have been made without Parliament having the opportunity to look at it in draft.

As for the particular circumstances of this crisis, obviously the Coronavirus Act was long and complicated, but some of the things done in it were relatively simple. As we move to lift the lockdown in different sectors at different times, with different implications and different possible complexities, it becomes more important that Parliament should be able to play its role in identifying unforeseen circumstances, possible errors and so on. The wish of government to do things quickly becomes less justifiable and the need for Parliament to be involved becomes more important.

Professor Meg Russell: To sum up in a few words the old adage that was a favourite of Robin Cook: good scrutiny makes for good government. Government and Parliament are not enemies. Parliament should be government's friend in ensuring that policy is carefully thought through. A point made in debate by former Conservative Chief Whip Mark Harper was that if some of these issues had been debated in the

Commons, it would have helped communication. It would not only have helped policy by perhaps taking some of the rough edges off it and avoiding mistakes but would have helped the public to understand what the rules were, because all this stuff is being rushed through so quickly. We know that the Government are introducing things—for example, the quarantine—which Conservative Back-Benchers are very unhappy about, and they are not getting an opportunity to debate them. That is a mistake.

Q88 Lord Howarth of Newport: Where the Coronavirus Bill was concerned, Parliament took the Government on trust and it is very hard to see, as Sir David said, how it could have been otherwise, but is it not a different case with the Corporate Insolvency and Governance Bill, which the Government justified bringing in on a fast track on the basis that emergency measures were needed to protect businesses?

In a nifty bit of constitutional opportunism, as I see it, they also brought in permanent powers. This is a vast, complex, technical, contentious and very important Bill, which went through all its stages in the House of Commons in one day—indeed, its remaining stages after Second Reading in half an hour. There was no scrutiny in the House of Commons, but it has proved extremely difficult to provide adequate scrutiny for it in the House of Lords. We have had vast groupings of amendments, and we have had difficulties in tabling amendments because they had to be put down so early.

What do our witnesses think about the performance of both the Government and Parliament in regard to both Bills, but particularly the corporate insolvency Bill?

Sir David Natzler: I know that this is controversial within the Lords, so I will be careful. It is obviously wrong if the Government have used emergency procedures dishonestly. I notice that the Bill raced through the Commons, as is not unusual, but I have to agree that the difference between temporary changes and permanent changes seems significant. Otherwise, I know very little about the details of the Bill.

The Chair: Lord Pannick, you wanted to follow up, I think.

Lord Pannick: No, my question has already been answered.

Q89 Baroness Corston: If we may turn to the future, what does Parliament need to do to operate, and be seen to operate, effectively in the short term? Can you think of any further procedural or practical changes that should be considered?

Dr Hannah White: The second part of your question, on Parliament being “seen to operate” as well as what it knows it is doing, is key. In this session and the previous one, we have talked a lot about how this period has felt from the point of view of Parliament, but we must not neglect to think about how it has felt from that of the public.

Chair, you raised a point at the end of the last session about recesses. Recesses in crises in general might require some serious thought.

Regardless of whether the crisis appears to have receded by the time we get to the Summer Recess, it is important to think about how government can continue to talk to Parliament during it. Something akin to what was done in the initial stages in New Zealand—that is, some committee accountability if nothing more complicated—is not a bad idea, although I doubt that the Government would want to set it up for a month.

As for a possible second wave in the autumn or winter, if your Lordships are not intending to roll back the current way you are operating, it may make less difference, but the Commons needs to think hard about what measures it might reimpose on itself.

I have a more general point about staff capacity and the resilience of staff teams. Lots of people have acknowledged how hard the staff have worked and at what pace. Many of them work in small teams; many of them will have taken no leave. Being realistic about what level of activity they can sustain and for what period of time is important. The crisis may not recede, but their ability to continue to support everyone at the level at which they have been operating may start to suffer.

Q90 Lord Hennessy of Nympsfield: Do you think that the Covid experience across the country has raised a constellation of questions in the public's mind over the parliamentary system as a whole—the way we do our business in both Houses? Do you think there is a chance coming out of it, post pathogen, that the parliamentary system as a whole and parliamentarians can raise their game and not just offer a better yesterday, which, you will remember, was Ralf Dahrendorf's rather unkind description of the SDP?

Professor Meg Russell: I would certainly hope so. In the previous session, you asked this question specifically with regard to the House of Lords, which of course is an institution that has constantly to defend its own existence. In some respects, that is rather healthy; it keeps you thinking about what is needed.

I would connect this to the previous point made by Hannah about the need to rise to the current challenge, particularly the challenge of what happens over the summer. I confess that I had not really thought about that until I listened to your previous session. The Summer Recess is often quite bad news for Parliament. People think that you have all gone on a long holiday. To go on a long holiday in the middle of a crisis would not look good.

On changes, I have said that Ruth Fox and I wrote a piece at Easter. We suggested that some rather more innovative things might be done which have not been done. The changes have been a lot to do with getting back online things that Parliament was already doing. There has not been much innovation procedurally, although there has been technologically. For example, now that the press conferences have ended, could they be replaced by a regular daily slot in Parliament to answer on urgent matters

related to the coronavirus? Ruth Fox and I suggested that right at the beginning and it could be happening now.

We also suggested more regular meetings of the Liaison Committee with the Prime Minister. The Prime Minister did not look overly enthusiastic to come back to the Liaison Committee when he appeared recently, but that is one thing that can meet over the summer, as could a specialist committee. All this needs urgent thought, because a long break, if there were urgent matters and there was no parliamentary oversight, would be bad for the image of Parliament.

Dr Hannah White: I agree with Meg. It might be useful to undertake some research and active inquiry into how Parliament has been perceived by the public during this period. It is absolutely right that there is a sense that everyone in Westminster just wants to settle back to what they see as normal. As Meg said, formerly analogue processes have been made digital. Some of that might stick, but basically everyone wants to go back to the analogue, and I am not sure you should assume that that will necessarily be the case.

Sir David Natzler: I absolutely agree that the summer is important, but I stress the point that Members—I am talking just about the Commons—are exhausted; I think one of you said that. They are getting five times the usual volume of constituency mail, according to one statistical count I have heard. They are also, I think, emotionally exhausted, and so are the staff. We have to be realistic about having lots of communicating committees all the way through August. Even if there is bad news and some things have to be re-imposed, I am not sure that Parliament not sitting will necessarily be a disaster.

I know no more than anyone else whether the public have been sitting around for the past three months noticing what Parliament is or is not doing; as Hannah said, it would be interesting to find out. Obviously we have been obsessing with it. I have been obsessed with it and blogging like mad to stay sane, but my impression from the receipt of it is that most of the rest of the population has simply been trying to keep its head above water. As we are all emerging, everyone is thinking, "Should I return to the workplace as before?", "Will University College London be the same as before, or completely different?", "Will we ever see live lectures again?" Every institution will go back and think, "Gosh, we can't pretend nothing's happened, and we're not pretending nothing's happened, but we're not sure what feels right in the post-summer situation".

The Chair: Thank you very much for helping us with our rethinking about what has been happening. All three of you have provided us with very thoughtful contributions, and sincere thanks to you all.