

## Mr Main – written evidence (CIC0431)

### House of Lords Constitution Committee

#### Inquiry into the Constitutional Implications of COVID-19

1. I am currently a post-graduate student and have an academic background in International Relations and Politics. I am engaging in legal studies in the pursuit of a career within the legal profession. Part of my academic studies have centered on the role of the state within society, with my critical work exploring the appropriate boundaries of state power and its relationship to the individual. However, my interest in both the political and legal evaluation of the state's behavior is not solely academic. I have a personal investment in the issue as well, for I consider the role of government, the actions it takes and the mutually beneficial relationship it maintains with its citizens, to be a vital tenet of a functioning, liberal, democratic society. With that being said, the written testimony I am providing today is *not* to be conflated with a political message: I am simply outlining my personal attachment to the issue, rather than attempting to pander to any political movement. In summary, I have both a professional and personal investment in the government's response to COVID-19, for it is of great critical debate within the political and legal academic sphere, for which I am involved in, and it challenges my personal and philosophical beliefs on a practical basis and, thus, impacts my daily way of life.
2. I wish to address a certain number of questions that the committee is attempting to address. I shall do so with as much objectivity and impartiality as possible, so as to provide a more factual and reasoned argument.
3. On the second question, concerning the proportionality of the governments powers in response to the ongoing pandemic (and, indeed, if the Coronavirus Act 2020 was necessary to implement), it is striking to note that – when personally reading the legislation – the Act in question does not confer legal powers onto ministers to enforce certain restrictions and policies that have been enacted over the past year. Take, for instance, the first national lockdown, which the government imposed using said Act as its form of legal authority. Indeed, the Act in question is mainly concerned with increasing governmental power in distributing medical resources across the country and with authorizing and managing public taxpayer money to deal with the pandemic; from the NHS, to vaccinations, to the police force.
4. However, nowhere within the Act is a national lockdown permitted; a lockdown that confined healthy, free citizens to their house, effectively under house arrest. The only restrictive powers that the Act provides can fundamentally be found under Schedules 21 and 22, whereby the former permits public health officials to 'screen' suspected infectious individuals and can do so with the assistance of a constable, as per paragraph 6 (1)(c), and the latter permits the Secretary of State to ban "events" or "gatherings", whilst also granting said Secretary of State the power to close premises with the aim of controlling the transmission of the virus itself. This is the extent to which the government can restrict upon the people's liberties under the Coronavirus Act: they can detain *suspected* infectious individuals and screen them for traces of the virus, they can prohibit large gatherings of events, and they can close businesses in order to attempt to control the spread of the disease.

5. Therefore, my question is: how does a national lockdown fit within these parameters? How can a national lockdown be legally justified under the Coronavirus Act, if no such powers are conferred upon ministers to do so? The only answer I can arrive at is simple: the government *does not*, under this Act, retain the authority to do so. This is perplexing, as there is statutory legislation available that provides the government a legal authority to rescind personal liberty of the population, that being the Civil Contingencies Act 2004, in events that "threaten serious damage to human welfare in the United Kingdom" (as listed under s.19(1)(a)). However, this Act, and rightly so, requires intense parliamentary scrutiny given its severity. To combat this, ministers have, instead, utilized amended sections of the parent Act to the Coronavirus legislation, the Public Health (Control of Disease) Act 1984, to avoid the legislative scrutiny involved if such a provision was enacted in the Coronavirus Act. As stated within the Public Health Act, section 45 (c)(1) permits the Secretary of State to introduce regulations "for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales".
6. However, a significant issue arises here: the statutory provision contains loosely defined terms that, ultimately, retain very wide powers, and as Lord Sumption, speaking extrajudicially, has outlined, it is a fundamental constitutional principle that "general words are not to be read as authorizing the infringement of fundamental rights." Due to this, as Lord Sumption has gone on to say, the powers that are conferred under the Public Health Act "were not intended to authorise measures as drastic as those which have been imposed." If this is the case, that *both* the Coronavirus Act and the Public Health Act refrain from granting ministers the political, legal and constitutional ability to rescind fundamental human rights – namely, personal liberty – then I would argue that the legislative response from the government has been both unlawful and illegitimate. It is a common principle within our legal system, built upon the foundations of the rule of law, that the executive must point to actionable and legitimate law to support its policy decisions; a ruling most notable in *Entick v Carrington (1765)* 19 St Tr 1029, where Camden CJ. noted that "If [the power alleged by the Secretary of State and his messengers] is law, it will be found in our books. If it is not to be found there, it is not law." Suffice it to say, I do firmly believe that the government have acted in *ultra vires* in this circumstance; although this is, in itself, a judicial review matter.
7. An additional question the committee wishes to explore is that of question 7: Is criminalisation a proportionate, justified and appropriate response [to the pandemic]? I would certainly argue that criminalisation is an incorrect and illegitimate method to combat the pandemic, for I fear we – collectively, as a Western, liberal democracy – are forgetting the fundamental pillars of what make our society as just, fair and reasonable as possible. One of these principles is, of course, government by consent, and government by the rule of law. Primarily focussing on the former, it is a traditional political theory that states with a liberal political culture are constructed on the basis of consent. This is namely illustrated in the works of John Locke (and, specifically, his essay *The Second Treatise of Government*), John Stuart Mill, Charles-Louis de Secondat – or Montesquieu, as more commonly referred to – and so forth: the notion that *before* the existence of the state, there is a natural equilibrium – the state of nature – whereby humanity retains certain inalienable rights. These rights, among many, are fundamentally: the right to life, the right to self-defence, the right to own absolute private property. However, in the political theory sense, humanity enters a social contract with one another to form 'the state', in order to avoid mutual self-destruction. Upon this signing, the state offers to protect us from both foreign and domestic

threats, whilst we surrender some of our rights to said state; namely, the right to self-defence and the right to own absolute property.

8. Indeed, the right to self-defence is, instead, concentrated in an executive force – the police – and the judiciary – the courts – for they are the arms of the state whose moral, political and legal duty is to protect the sovereign citizen against transgressors of the natural law, and, if they fail to do so, they become illegitimate entities. John Locke, as previously mentioned, considered this in a much more eloquent style, writing how the state:
  - a. *"is bound to govern by established standing laws, promulgated and known to the people, [... which is] to be directed to no other end to the safety, and public good, of the people". (John Locke, The Second Treatise of Government, 1690)*
9. Why do I highlight this social contract analogy and, indeed, these fundamental rights? It is the duty of the state – namely, the executive and the judiciary – to protect said fundamental rights, and by criminalizing personal liberty, through either the liberty to travel, the liberty to *not wear* certain items of clothing (i.e., mandatory mask wearing), the liberty to see family and friends, the state is, ultimately, acting in an illegitimate manner. How can we be expected to live in a so-called Western, liberal, democratic society, where there is legislative power to rescind personal liberty through ministerial decree? How can liberty prosper when liberty can be so easily rescinded? Is this not the very ideal we fought against during the twentieth century – a government that wished to impose its own political order on its citizens, disregarding fundamental rights in the process?
10. As Miller has written, the police – for instance – are simply ‘agents of the legal system to which officials of the state themselves [are] supposed to be subordinate to’, and yet I fear the police have become a political mechanism for the executive, rather than individual enforcers of the rule of law. Indeed, these are very serious questions and criticisms, and I am shocked that I am having to write this statement about the *United Kingdom*; a country that has been a historical beacon for liberty, the protection of human rights, the upholding of the rule of law, the consenting relationship between the citizens and government, etc. However, I fear that in the course of 2020, the government have become indoctrinated with the poisonous idea that it has the political and *moral* right to rescind liberties without, first, considering the consequences of such an action.
11. In short, I believe the criminalisation of exercising personal liberty and free choice is a dangerous path; one that has been attempted before but failed throughout the twentieth century – a century that is, arguably, a story of horrors and a century of lessons that we are at risk of forgetting. This is not to suggest that we are somehow on the verge of a totalitarian state, but as the common saying goes: the road to hell is paved with good intentions, and every action we take as a country sets precedent for future governments; precedent, as the Rt Honourable Theresa May recently highlighted, that “could be misused by a Government in future with the worst of intention, and that has unintended consequences”.
12. Finally, in reference to questions 8 and 12, I do, personally, believe there are suitable reformations that we can enact which will help guide our country back into prosperity, whilst, most importantly, protecting those most at risk from COVID-19. Firstly, I would argue that any further measures that are to be introduced to tackle the pandemic should be done with a cost-benefit analysis in mind; for instance, if another lockdown was to be imposed, what are the benefits and what are the costs of this? If mandatory mask-wearing is to continue throughout 2021, again, what are the advantages and disadvantages to this?

Important factors to consider, if new measures were to be introduced, would be as follows:

- The impact on health – both physical and psychological.
  - The economic impact – how damaging would the new measures be to small, medium and large-sized businesses throughout the country?
  - The livelihood impact – what will be the *condition* of life itself?
  - The impact on non-COVID related illnesses – how badly are these new measures likely to impact those awaiting treatment for cancer, common respiratory illnesses, heart problems, kidney diseases, chronic obstructive pulmonary diseases, diabetes, dementia, Alzheimer's, and other significant illnesses?
  - The impact on education – from children in primary school to students, like myself, in University and other educational fields?
  - The impact on national poverty – how likely are the new measures to further the economic divides within the country?
  - The impact on public confidence – are the new measures likely to increase public confidence in the political, legal and social-welfare institutions?
13. These are just a selection of *many* important factors that any new restrictions must take into account going forward. These issues cannot be forgotten. Any loss of life, whether it be from COVID-19 or otherwise, is tragic and devastating, but public policy must remain impartial, objective and rational so as to guide the public conscience towards a better future; this means taking into account all those who may suffer at the hands of further restrictions enacted in the potential future, as well as those who may suffer from COVID-19 itself.
14. In relation to question 12, I would certainly advocate looking towards other countries and their methods of combatting the COVID-19 pandemic, so as to strengthen our own national response. Notably, I would shine a light on Sweden's approach; a method that, on the one hand, increased ICU capacity, protected (albeit too late, as they have admitted) care homes, introduced *advice* on social distancing and consistent hygiene reminders, whilst also continuing to respect fundamental human rights, personal liberty, the rule of law and its tenets of a liberal democratic society. It is proof that both science and public policy can work in tandem, and is an approach I would like the government to seriously consider going into the future. This is not to say there are no risks involved, and this is certainly not an endorsement of said approach in its entirety, but a more rational, respectful and modest debate in the public sphere is needed in order to prevent additional political, legal or socioeconomic damage.
15. I would like to conclude by thanking this committee for allowing members of the public to submit written evidence on how the government's actions have impacted their lives over this last year. I would also like to thank the committee for investigating into the governments conduct and providing necessary criticism and oversight where needed. Fundamentally, it is my experience and my intellectual belief that the government have acted with political and legal contempt when responding to COVID-19. From the outset, the continuous use of lockdowns and restrictive measures on the individual is costing more than it is solving; personal and national debt is increasing, businesses are at risk of closing, livelihoods are being decimated, other dangerous illnesses and diseases are being forgotten and our fundamental human rights are being disregarded in the name of collective action. This is a dangerous path and one that needs to be rectified before it is too late.
16. Let us promote rational and reasoned debate within the political, scientific and legal sphere, and let us fight COVID with a collective respect for our fundamental

human rights, whilst protecting those most at risk from the disease and ensuring life and liberty continue to prosper.

*18/11/2020*