

Mr Stephen Dougherty – written evidence (CIC0466)

House of Lords Constitution Committee Inquiry into the Constitutional Implications of COVID-19

Has the use of emergency powers by the Government to address the pandemic been proportionate?

1. The government's response to the coronavirus pandemic is wholly disproportionate to the threat it poses.
2. Since the legality of the measures taken by the Health Secretary under both the Coronavirus Act and the 1984 Act explicitly depends upon their being proportionate to the the threat, government, it follows that the measures taken were illegal.
3. In its response to a petition to repeal the Coronavirus Act the government said,
4. "The UK government's coronavirus action plan, published on 3 March, set out measures to respond to the Coronavirus pandemic that are reasonable, proportionate and were based on the latest scientific evidence. The plan envisaged that changes to legislation might be necessary in order to give public bodies across the UK the tools and powers they need to carry out an effective response to this emergency. On 25 March, the Coronavirus Act 2020 received Royal Assent."
5. <https://petition.parliament.uk/petitions/313310>
6. This makes it clear that the Coronavirus Act was drawn up as part of the government's action plan, published on 3 March 2020.
7. It also spells out the legal basis for the "necessary" changes to legislation (such as the Coronavirus Act and the regulations enacted under the 1984 Act); the measures were to be "reasonable, proportionate and ... based on the latest scientific evidence".
8. The measures in the action plan were based on the the scientific evidence available on 3 March.
9. However, the scientific evidence changed, before the passing of the Coronavirus Act.
10. An update appeared (and remains) on the government's PHE website. It says:
11. "As of 19 March 2020, COVID-19 is no longer considered to be a high consequence infectious disease (HCID) in the UK.
12. The 4 nations public health HCID group made an interim recommendation in January 2020 to classify COVID-19 as an HCID. This was based on consideration of the UK HCID criteria about the virus and the disease with information available during the early stages of the outbreak. Now that more is known about COVID-19, the public health bodies in the UK have reviewed the most up to date information about COVID-19 against the UK HCID criteria. They have determined that several features have now changed; in particular, more information is available about mortality rates (low overall), and there is now greater clinical awareness and a specific and sensitive laboratory test, the availability of which continues to increase.
13. The Advisory Committee on Dangerous Pathogens (ACDP) is also of the opinion that COVID-19 should no longer be classified as an HCID."

14. It follows from this that the Coronavirus Act and the measures included in the 3 March government action plan were not based on the latest scientific evidence, and were therefore illegal.
15. Of course, parliament could have decided that the measures were still necessary on other (perhaps precautionary grounds), but they nodded the legislation through with little debate and no division. The change in status of the disease was not, to my knowledge raised.
16. It was clear from correspondence with my local MP that she was not made aware of the change in status of Covid-19, and there are strong grounds for believing that MPs were not given this critical piece of information. Had they known the disease was far less deadly than was initially believed to have been the case, they may well have decided differently. Parliament passed the Coronavirus Act and accepted the need for the measures on the basis of out of date scientific evidence.
17. I would also suggest that by any measure of reasonableness, imprisoning millions of people in their own homes, removing sick people from hospitals, many to be sent, untested for any virus, back into care homes where thousands may have died as a result, cancelling cancer screenings and treatment, postponing operations, destroying businesses and creating mass unemployment, denying people contact with loved ones, cancelling weddings, and amplifying the misery of mourners at socially distanced funerals, turning normal human behaviour into a crime and encouraging citizens to betray their neighbours is a disproportionate reaction to a disease with "low overall" mortality rates, that is "no longer considered to be a high consequence infectious disease".
18. Many cruel and illiberal measures have been justified by out of date and/or woefully inaccurate scientific advice, most recently Mr Vallance's notorious projection of 4,000 deaths that helped to trigger the current lockdown.
19. It could be argued that the number of deaths associated with Covid-19, though well below the vast numbers feared, still justify the measures, but proportionality clearly depended on measures being based on the latest scientific evidence and they were not.
20. It is also the case that the collateral damage from lockdowns and other measures were not taken into account. A government report, published in April projected that 200,000 lives could eventually be lost as a result of lockdown, and tens of thousands have already died.
21. <https://www.telegraph.co.uk/news/2020/07/19/lockdown-may-cost-200k-lives-government-report-shows/>
22. There is no evidence that the measures taken have saved any lives. The countries in the world with the highest death rates per million have had the hardest earliest lockdowns. We don't know if lockdowns have saved any lives, but we do know they have killed thousands.
23. Finally, the WHO has accepted Prof. Ioannidis's peer reviewed research showing that the Infection Fatality Rate for the Covid-19 is below 0.2% and falling. This is more than 17 times lower than the WHO's initial estimate of 3.4% that triggered the crisis, and very close to that of seasonal flu. So even if the measures had been proportionate when the Coronavirus Act was passed, they certainly aren't now.
24. Legally, practically and morally, the measures taken by the government are completely disproportionate to the threat posed by Covid-19.