

Law or Fiction Limited – written evidence (CIC0473)

House of Lords Constitution Committee

Inquiry into the Constitutional Implications of COVID-19

Introduction

1 I am practicing solicitor of over 25 years' experience and founder of Laworfiction.com. This submission is short having regard to extremely late awareness of the committee's call for evidence.

2 As I explained on its home page, Laworfiction was set up:

“for ordinary citizens, including lawyers, to understand their rights and how they have been affected, or not, as a result of the UK government's response to Covid-19. Leaving aside argument over the cost to lives and livelihoods resulting from the sustained lockdown policy and economic damage resulting, the dressing up of unenforceable policy guidance as enforceable rule of law is an issue of serious public concern.

On 18th March 2020, the Prime Minister and Education Secretary announced to the country that, after schools shut their gates on the afternoon of Friday 20th March they would, for the vast majority of pupils, remain closed until further notice.

In response to various aspects of lockdown, businessman Simon Dolan filed a judicial review application in the Courts. Among the complaints was that the government and its ministers did not have the legal authority to close the schools as they did. The defence filed in Court was that government ministers didn't order closures of the schools! Instead, they say:

“This was a request, not a direction.”

Ordinary citizens listening to the government message had thought that the government had forced the schools to close and was exercising its authority to do so. The defence in Court was nothing less than the government admitting its ministers had been either ignorant or duplicitous in their communications with the public.

Representation was made to the public of the existence a legal obligation that was, in truth, fictional. When `requests' or unenforceable guidance are promoted by government and in mainstream media as enforceable rules of law, we are being misled.”

3 It is with regret, as has been remarked upon by Lord Sumption among others, that the government has continued in the same vein to this very day. Why and how should that happen?

- 4 The answer lies partly but significantly in the fact that so many new laws have been passed under statutory instrument under supposed authority of the Public Health (Control of Disease) Act 1984 (**'the 1984 Act'**) with such speed and in such complexity that lawyers, let alone Members of Parliament or the House of Lords could comprehend them.
- 5 It has been apparent from interviews of ministers, such as Mr Hancock on BBC Radio in Manchester at the time of introduction of restrictions in Manchester, that he did not understand the laws he was passing.
- 6 My experience, through a very large number of enquiries and report to the lawofiction site, as well as personally, is that neither local authorities have very confused understanding of the laws but are simply interpreting guidance, not knowing if it is law or just guidance, and frequently going further that the guidance requires, seemingly thinking going further is better, but failing to appreciate they may well be acting unlawfully by doing so.
- 7 Fundamentally, the speed with which the government has acted and with no scrutiny from Parliament has left Parliament failing to appreciate the fundamental failure throughout this response to Covid-19: no one in SAGE, no body, no minister, no person it would seem, has been appointed to consider the harms that may be caused by measures being taken to suppress transmission of this particular virus.
- 8 The Health and Safety at Work Act 1974 and the various safety regulations made pursuant to it require risk assessment to be made the dangers arising from any activities. 45 years of experience and common sense have been upended with the government, through the Health and Safety Executive, telling the country to all it can to make every place 'covid secure' without first having any regard to the consequences of the measures taken to do so. There may be some scant regard, but it must according to this new determined ignorance of the law, be secondary and by way of mitigation. "Oh, yes, it may cause depression, but consider offering some counselling." This is not fiction. This is the true effect of the 'covid secure' template risk assessment foisted out to large and small businesses across the country.
- 9 This could not have happened if there was proper time and scrutiny of the powers being exercised by Mr Hancock.

18/11/2020