CIVITAS

Unravelling the Covid State: From parliamentary democracy to the regulatory state?

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Glossary

ACMD: Advisory Council on the Misuse of Drugs

ALB: Arm's-length body

BEIS: Department for Business, Energy and Industrial Strategy

CBA: Cost Benefit Analysis

COBR: Cabinet Office Briefing Room

CRG: Covid Recovery Group

DHSC: Department of Health and Social Care

GCSA: Government Chief Scientific Adviser

GDP: Gross Domestic Product

IEA: Institute of Economic Affairs

IfG: Institute for Government

JBC: Joint Biosecurity Centre

MAD: Multiple accountabilities disorder

NERVTAG: New and Emerging Respiratory Virus Threats Advisory Group

NDPB: Non-Departmental Public Body

NHST&T: NHS Test and Trace

NMD: Non-Ministerial Department

NPIs: Non-Pharmaceutical Interventions

OBR: Office for Budget Responsibility

ONS: Office for National Statistics

PACAC: Public Administration Committee and Constitutional Affairs Committee. Previously, Public Administration Committee (PAC).

PHE: Public Health England

PMBs: Private Member Bills

PPE: Personal Protective Equipment

RIA: Regulatory Impact Assessment

SAGE: Scientific Advisory Group for Emergencies

SEAGE: Social and Economic Advisory Group for Emergencies

SEND: Special educational needs and disabilities

SPI-B: Scientific Pandemic Influenza Group on Behaviour

SPI-M: Scientific Pandemic Influenza Group on Modelling

SIs: Statutory Instruments

SMEs: Small and Medium-Sized Enterprises

STEM: Science, Technology, Engineering and Maths

TOR: Terms of reference

UKHSA: UK Health Security Agency

WHO: World Health Organization

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Summary

At the forefront of Britain's response to Covid-19 is the emergence of a new phase in the growth of the regulatory state. Many of the features of our pandemic response reflected the ongoing transformation of the state. The post-war state was defined by a machine capable of strategic planning and mobilising resources to meet achievable goals. But, over 40 years of reform have put us on a path towards the regulatory state, in which, for example, crucial decision-making is delegated to arm's-length bodies (ALBs). The state's ability to coordinate executive policy has been comprehensively outsourced. But, in light of the pandemic response, this report suggests we need a state that is prepared to exercise authority, mobilise resources and be accountable for its decisions.

The UK has created a web of government networks in the necessary defence against the ravages of a disease about which so little is still known, but also unprecedented forms of governance which have been able to supplant regular representative democratic features with those of more technocratic models. While many would rightly expect the British model, and indeed the Westminster model of governance, to survive and thrive – as it has during past world wars and challenges – we are still faced with an unfortunate outcome in which elaborate adviser-led networks are being given an even stronger place in policy-making, to the extent that representative elements of our democracy are replaced with deeper technocratic and regulatory purposes.

One constructive guiding theme of the government's recovery plan is to 'build back better' after the worst of the pandemic has subsided. This policy should apply as much as to rebuilding our failed structures of governance as to the reform of our public health and financial institutions, through to reigniting the growth potential in the economy. To return from a flawed regulatory state model – in which laws are routinely promulgated by ministerial decree, but no measurable impact is made of them – the constitution will require a commitment to more robust democratic standards. Those standards include:

- Transparency of decision-making.
- Openness in government.
- Accountability to parliament and society.
- Making law, where necessary, proportionate, justified and appropriate.
- Robust scrutiny for all public-serving bodies.
- Judging judges: learning to doubt arm's-length bodies.

Scientocracy: handing governing powers to 'the science'

We find that that ministers' near-total dependence on one committee, namely SAGE, has produced a network so much greater than 'an advisory group'. The subsequent structures put in place between minsters, SAGE and the Cabinet Office produced a set of policies that often avoided many of our democratic standards and conventions, and should be reformed without delay. Our concerns and recommendations include:

- It is for the Cabinet Office to ensure that the Covid-19 Cabinet committees are provided with an institutional framework that integrates health, social, economic and other advice in coordinating the response to the pandemic.
- Advisory groups which inform government decision-making should not ever be granted 'a representational monopoly' within those arm's-length networks.
- One viable solution learns from the House of Lords' EU Committee structure to argue that all the various ALBs – to include SAGE and NERVTAG in the future – report regularly, directly and more systematically into a sub-Select Committee within the House of Commons committee system to improve parliamentary accountability. It would add a new level of rigorous scrutiny over our public bodies.
- The experience of Covid-19 has taught us that the well-intended system of additional, criss-crossing arms of government is over.
- If many other advisory councils and bodies are enabled to operate as advisory non-departmental public bodies (NDPBs) sponsored by the responsible Department, we should consider why the enhanced roles of SAGE and NERVTAG could not also occupy a similar position, albeit made more directly accountable to the public and parliament.
- Why could such bodies not invite a vastly expanded panel of lay members – from retired GPs through to former parish chairpersons to finance managers – to serve on their boards in order to respond to particular policies or guidance in the documentation presented? Since they would not be a member of the organisation and would offer a sense of scrutiny more closely aligned to the public interest, they would bring an outside, independent and more public-focused perspective to enhance governance.
- That SAGE did not have a specific economic group, and nor could it be made practicable, should suggest to the government that they build a parallel committee of economists and social scientists. A Social & Economic Advisory Group for Emergencies (SEAGE) would provide economic and social advice to support government decision-makers during emergencies. SEAGE could provide high-level advice which would not equate with official government policy.

- The importance of social scientists and economists being involved is that they should illustrate the public trade-offs – setting out a balance of harms – for each of the different courses of action that could be pursued.

The weaknesses of ministerial deference to 'the science'

A crucial aspect of the secretive but powerful elaborate networks that developed throughout our experience of Covid-19 has been the reverence that government ministers demonstrated in following the science of advisory groups, which had toxic implications for democratic standards. The deficiencies and solutions to the current system include:

- The radical downside of ministers deferring to SAGE's advice to avoid any culpability is that the unchallenged supremacy of limited advice supplants political judgements on governing for the overall good of society.
- A deference to 'the science' is inaccurate since the nature of science is that it is not all settled – all our knowledge being tentative and provisional. The mantra of 'following the science' can be a dangerous one when modelling is being employed and deemed to be science in itself.
- There are now several stark comparisons that can be drawn between restriction-enthusiasm for Covid-19 and other current zero-tolerance emergency projects for which excessive state power is deemed necessary.
- For MPs and peers in Parliament with social sciences backgrounds, we should do more to upskill them to ensure they have good scientific literacy and knowledge.
- Much closer consideration should be given to the evidence suggesting women with a science, technology, engineering and maths (STEM) background are far more likely to become passionate STEM advocates in Parliament than men.
- The notion of 'following the science' presents several convenient paths to avoid or limit accountability, rather than the more realistic ambition to 'take account of' such science.

The Democratic Flaw: Ministerial decree versus parliamentary scrutiny

If we are to constructively engage with remaking our democratic model in order to 'build back better' the UK's governance processes, it is necessary to first understand what went wrong in the ability of parliament to scrutinise and hold the government to account. When we consider the democratic flaws which enabled minsters, combined with civils servants, to sidestep the machinery which makes parliamentary democracy workable, there are a number of facets:

- When we combed through government records, confining all our searches to certain subjects – Brexit, Defence, Covid, and so forth – and searched only for references to 'parliament', we found that government 'Covid' communications had the fewest references (three per cent) to 'parliament' – compared with Brexit communications, which had the highest number of references (25 per cent) to 'parliament'.
- While we might accept that parliament did respond to the pandemic and lockdowns with a mixture of hybrid arrangements, in many senses, it did not match the available opportunities and speeches made by MPs and peers in previous years on other parliament-absorbing subjects. We present further evidence on this point.
- It is concerning, in legislative terms, that the government opted to use the 1984 Public Health Act for lockdown power because, by comparison with the Civil Contingencies Act, the degree of scrutiny provided for under the Public Health Act is limited. This must be remedied so it cannot be allowed to happen again.
- Given the emphasis placed on ministerial decree and the absence of parliamentary scrutiny, this process enabled government to produce a 'fuzz' of lockdown rules.
- Parliamentary sovereignty is a fundamental principle of the UK's democratic constitution. Parliament is accepted as the supreme legal authority in the UK, which can create, amend or reject any law. But arguably, if it can no longer amend or reject Covid-19 regulations, parliament has become anything but 'a supreme legal authority'.
- On far too many occasions, important Statutory Instruments (Sis) were published only a matter of hours before they came into force. Leading governmental explanations as to why important measures came into effect before they were laid before parliament were either unpersuasive or implausible. The process of SI-enacted decision-making needs reform.
- The formation of executive-led Covid-regulation has, over time, led to an erosion of Parliament's regulation of the executive, although in fairness, the Covid Recovery Group (CRG) of MPs resisted some of this pressure through the Brady amendment in autumn 2020.
- One of the distinct limitations placed on MPs to debate has been through the hybrid 'pre-published call lists' which were imposed on debates for motions and on legislation.
- The removal of spontaneity in the chamber, the extra empowerment of ministers, alongside a concern for MPs being shut out of debates and discouraging attendance, was at the core of MP reservations for the call list system.
- The ability for legislators to 'fight back' against government policy through informal networks is at the centre of parliamentary life. Although there will be competing arguments as to the utility of a hybrid approach in parliament during a public emergency – in which MPs were, for long periods, not required to be in the chamber and operated in debates from afar through remote screen-facing technologies – it cannot be accepted

that this was, or should be in future, an acceptable arrangement. Hybrid arrangements were at the forefront of why parliament did not work effectively.

- The fact that legislation containing harsh restrictions on people's basic liberties, unamendable by MPs and made under the urgent procedure – and therefore without effective parliamentary scrutiny – combined with the speedy passage of the Coronavirus Act, means that the parliamentary scrutiny of the Government's handling of Covid-19 was not fit for purpose.

- As the House of Lords Select Committee on the Constitution have remarked, exceptional Covid-19 powers are 'lent, not granted, by the legislature to the executive', and such powers should be 'returned as swiftly and completely as possible, avoiding any spill over into permanence'.

- There are important lessons for all political parties since parliament's inability to scrutinise and amend is shown by the fact that those who might have been expected to take an oppositional or critical stance towards the regulations, simply did not. In short, a parliament had been created with only varying degrees of restriction-enthusiastic positions. Many self-employed individuals and business-owners who were sceptical of the government's restrictions and the potential impact on their lives from non-pharmaceutical interventions, had no parliamentary representation.

- The idea that government should first make significant policy announcements to Parliament – which was otherwise a defining feature of the Ministerial Code – is now under strain, if not only occasionally respected. The pandemic further undermined this principle and should be remedied by parliament.

- As demonstrated through parliamentary resistance in the form of the 'Brady amendment' in September 2020, government and others must acknowledge that parliamentary votes should in future be held before the introduction of all new UK- or England-wide measures.

- Furthermore, by moving to a fortnightly or monthly allocation of opposition and backbench times (and not by session), we could allow for some transfer of power to MPs to make decisions, at least on terms that should have applied to Covid regulations.

- The excessive dependence on Sis has highlighted not only the absence of parliamentary involvement but the setting aside of scrutiny. These arrangements must be reformed.

The principle of cost-benefit analysis and understanding impacts

If we are to look at UK governance processes during the experience of Covid-19, a defining feature has been the reduced role of impact assessments or larger cost-benefit analyses. These have been disproportionately downgraded to the extent that no measurable impact assessment (pre- or post-policy) has been conducted on the various health and non-pharmaceutical interventions. At the core of regulatory impact is the need for the state to answer to the public and parliament in order to acquire democratic legitimacy and accountability. For the future, we can learn from this process by acknowledging that:

- An appreciation of impacts might have enabled an economic assessment of the best options. Impact assessments enable the government to assess the wider economic, trade and investment implications of the preferred option from the analysis – including impacts on potential trading for different business sectors affected.
- Multiple parliamentary select committee reports have routinely called for government to perform a cost-benefit analysis on their policies.
- When we combed through the government communications, confining all our searches to certain subjects – Brexit, Defence, Covid, and so forth – and searched only for references to 'impact assessment', we found that government 'Covid' communications come back with some of the lowest number of references (0.7 per cent) to 'impact assessment'. In contrast, government Brexit communications returned a slightly higher number of references (two per cent) to such assessments.
- For those who manage our NHS institutions and who profess a primary adherence to the principle of democratic 'inclusion' above all else, there has been little thinking on why such major decisions have often been made with so little involvement of the public in the deliberative process as to which policies should be pursued. If people are to abide by increasingly tight restrictions over substantial periods of time, then those policies must be accepted as fairly arrived at through open and inclusive decision-making. The culture of restriction-enthusiasm overpowered the desire for greater inclusion.
- The intense restriction-enthusiasm within the political, cultural and scientific elites, at the expense of regular citizens who were either sceptical or unable to draw the necessary halt to their livelihoods, was strongly reflected across our political, scientific and media institutions.
- Deliberative decision-making that is inclusive, transparent and accountable contributes to a more trusting public response and legitimacy for decisions on difficult ethical questions and the political trade-offs required during the pandemic, and in future.

- The Government is making important decisions without proper regard to all their impacts, both on health and the economy, with the public not being given both the reasons for, and the impact of, the restrictions imposed upon them.

- In the absence of understanding impact, it will become clearer to government that lockdowns and restrictions themselves cost lives, push death and suffering into the future, and will likely cause immense economic, social and non-Covid health damage over the long-term.

- The ambition of improved cost-benefit analyses could be achieved by bringing forward a new Public Health Act (as some MPs have suggested) to enable government to provide evidence for the proportionality of future lockdowns. A law which requires ministers to evaluate the benefits and harms of each proposed restriction with regards to its impact on health, education and the economy would be welcomed. Such legislation could also be tied into giving MPs the power in the House of Commons to vote on regular, amendable motions.

- In estimating the impacts on cancer deaths and treatments, some evidence suggests the UK may suffer 10,000 additional deaths from cancer as a result of the coronavirus pandemic and that it could take over a decade to clear the cancer treatment backlog in England. The importance of studying the 'balance of harms' in relation to lockdown and tiered restrictions is laid bare in recent evidence from the Office for National Statistics (ONS) figures, showing a considerable increase of around 20,823 additional deaths in England and Wales in the past four months, compared with the average for the same period in the five years up to 2019.[1] Of those fatalities, 45 per cent (9,292 deaths) did not involve coronavirus, while 11,531 were linked. While health authorities expect a higher mortality rate at this time of year, one thesis is that those with treatable conditions who put off hospital treatment appointments during the operation of the severest restrictions for the pandemic are now dying from those conditions or other related circumstances. An understanding of balance of harms can tell us much about this outcome.

- When considering economic data, various ONS, OBR and think-tank snapshots depicted the negative impact on, if not meltdown of, the UK economy. It should be considered that those initial dire warnings throughout 2020 were enough to justify a more thorough impact assessment of restrictions by a team of civil servants not only from the Department of Health and Social Care (DHSC), but within HM Treasury and the Department for Business, Energy and Industrial Strategy (BEIS).

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[1] Julia O'Driscoll, 'Unexplained surge in non-Covid deaths triggers calls for probe', https://www.theweek.co.uk/news/science-health/954825/extra-non-covid-deaths-increase

- Throughout the pandemic, and increasingly so, very high-profile experts had explicitly warned of the mounting mental health effects on the population resulting from lockdown restrictions.

Making Cabinet and its committees work effectively

It is increasingly noticeable that the structures and practices of modern Cabinet government have increased the likelihood of 'groupthink' occurring. The combination of the centralisation of power and a presidential focus on the Prime Minister has coincided with decreased opportunities for 'challenge' within the Cabinet process. Groupthink often emerges in crisis situations where the presentation of a united front is seen as important. But the difficulties within the Cabinet committee system went beyond that phenomenon and need to be understood more deeply:

- The move from COBR-led meetings and the grand Quad meetings – which may well have isolated Cabinet at certain times – through to the later Covid-S/Prime Ministerial and Covid-O/Gove committees – suggest the structures never truly worked, nor seemed completely settled. The British public were being governed from March 2020 onwards by largely unscrutinised scientific advice (outside of SAGE), unfiltered by ministerial Cabinet and, for most of the pandemic, all unamended by parliament.
- The implementation of the two committees suggests the Chair of Covid-O, Michael Gove, was accountable to Parliament for cross-government co-ordination of the response to Covid-19 and for ensuring decisions were informed by data, while only the Prime Minister stood in front of the country and Parliament to be accountable for key decisions, such as lockdown.

Why over-centralisation isn't the problem: confronting Whitehall managerialism, mutual learning, devolved separatism and private sector cooperation is the way forward

- One of the common complaints of the critics of the government's response seems to be of over-centralisation, but this can often be a red herring.
- Some say it is centralisation which did not work, but it is not strictly centralisation that inhibited our governance arrangements; the failures were due to the Whitehall managerialism which so pervasively inhabits the centre and proves so unreformable. Anti-centralisation arguments tend to rest on campaign requests for deeper political

devolution of the nations but, again, neither of those Covid-governance authorities have proven wholly successful. Neither do maximally devolved governments operate at the most local level, since they can replicate the problems already encountered with Westminster government.

- The sharing of data and information between the centre and local governments could have nonetheless been improved upon. There was a notable failure of national public bodies to share data that was available with each other, including between national and local government.

- Nonetheless, when looking at central and decentralised capacity, we might acknowledge there were clear benefits to having a strong central capacity in terms of the ability to implement rapid, decisive action.

- Research suggests we have no institutionalised processes of mutual learning, or rather they happen on an ad hoc basis in the UK. The Swiss system ensured locally-relevant responses were able to influence the general course of the country's strategy.

- Neither does it seem satisfactory to blame 'over-centralisation' when in fact cross-cutting themes, such as the inability of Whitehall advisers to grasp the relevance and roles of the private sector, came to the fore during many stages of the crisis. Irrespective of the successful initial vaccine programme, the clear chasm between private and public sector bodies should help to define the lessons to be learned.

- The lesson we can learn of providing PPE and ventilator equipment is to recognise that government and public sector bodies misunderstood what the private manufacturing sector within our own national borders could deliver.

- We must learn to refocus public policy and legislation – with full impact assessments – towards better programmes that help public interventions overcome a divorce from private actors within the United Kingdom. For example, a localised relationship-styled banking system would have better understood and connected the government's business loans policy with most local small and medium-sized enterprises (SMEs). Immediate concerns surrounding the UK's productive capacity, such as PPE being purchased during the crisis for a period from China, should be placed in a wider context of ensuring the economy is recalibrated so that in the future it is less dependent on other nations that may become unpredictable and therefore unreliable suppliers.

Introduction: Covid-19 and the emergence of the regulatory state

At the epicentre of Britain's response to Covid-19 is the emergence of a new phase in the growth of the regulatory state. Many of the failures witnessed during the pandemic – and the causes of those failures – reflected the ongoing transformation of state activity. As Professor Lee Jones (Reader in International Politics at Queen Mary University of London) sets out, Britain inherited from the Second World War a more 'command and control'-type state, that at the very least could govern.[2] It was buttressed by a Whitehall machine capable of strategic planning and mobilising resources to meet achievable goals. The state exerted some control over the resources and people to deliver practical policy.

But, over 40 years of reform have put us on a path towards the regulatory state. Decision-making is delegated to arm's-length bodies (ALBs). The state's ability to coordinate executive policy has been outsourced. Politicians do not seek to offer alternatives but tweak the technocratic engine, Lee Jones suggests. The Department of Health and Social Care does not *control*. NHS policy is outsourced to quangos and local commissioners. The panicked retreat into lockdown. Test and trace abandonment. The discharging of many of the elderly back to care homes by mid-April. PPE shortage. These all result from a separation of bureaucratic institutions from delivery capacities. In Jones' view, this is a product of a state system built around delegating responsibility, accountability and control which has found itself 'unsurprisingly' irresponsible, unaccountable and 'not in control of its fate'. The response should be that we need a state that is prepared to exercise authority, 'mobilise resources' and be 'accountable for its decisions'.[3]

For example, the performance of Public Health England (PHE) has come under the microscope since the beginning of the pandemic. According to John O'Connell of the Taxpayers' Alliance, the mistakes made by PHE 'are symptomatic of broader failure within the structure of government.' That is, 'Unaccountable quangos that hide behind their supposed expertise continue to let down taxpayers and frustrate public servants'. In O'Connell's view, the approach of PHE to the pandemic has demonstrated 'the painful and uncomfortable contrast' between the doctors and nurses working to save lives and the public health officials who have been 'focusing on the wrong priorities over the last few years.'[4]

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[2] Dr Lee Jones 'How the Coronavirus Pandemic Has Exposed Britain's Failed 'Regulatory State'', https://www.qmul.ac.uk/mei/news-and-opinion/items/how-the-coronavirus-pandemic-has-exposed-britains-failed-regulatory-state--dr-lee-jones.html

[3] Dr Lee Jones 'How the Coronavirus Pandemic Has Exposed Britain's Failed 'Regulatory State'', https://www.qmul.ac.uk/mei/news-and-opinion/items/how-the-coronavirus-pandemic-has-exposed-britains-failed-regulatory-state--dr-lee-jones.html

[4] John O'Connell, 'Last Tango for Quangos: PHE's performance highlights need to clean up quango state', https://www.taxpayersalliance.com/last_tango_for_quangos

The drift towards regulatory governance, if not the regulatory state, is a theme that has been discussed much across academia and politics well before the Covid-19 pandemic struck. According to Professor Colin Scott at University College Dublin, the main idea behind the regulatory state is that

> '…there is a distinctive mode of governance oriented towards the promulgation of rules that engages more or less systematic oversight of compliance with those rules by public agencies operating at arm's length from those they are overseeing'.[5]

It is this regulatory governance model which imposes a 'significant emphasis' on 'contractual instruments such as licences and bilateral contracts to set, monitor and enforce regulatory norms, both by governments and by others, on organisations that encompass state, market and community actors'.[6]

One identifiable feature in Professor Scott's analysis that characterises the neoliberal reforms of 'the new regulatory state' has been the reliance on ALBs for key elements of public service delivery.[7] Central to this change is the creation of ALBs 'for both delivery and regulation in rule-based governance regimes' which results in not only 'a shift from legislative discretion to the setting down of goals and expectations in rules, licences and contracts', but also the 'diffusion of responsibility for activities that had previously been managed directly by government ministries to executive agencies, linked to departments, to companies… and to non-governmental organisations'.[8] The citizen is recast as 'consumer'. It might be said by some that it places a greater emphasis on the steering of private and self-regulatory capacity over the aspiration to direct command and control.

The interaction of the government's Covid-19 response with the UK regulatory state – complete with the hollowing out of parliamentary authority and the increasing marginalisation of public impacts – suggests a long-overdue need for reform. Future reforms should focus on increasing public transparency and accountability in UK politics which rests, at least in part, on the recognition that the Covid-19 government decision-making process has appeared to be arbitrary, opaque, inadequately scrutinised and subject to pressure by insulated expertise within central state and 'arm's-length' government bodies, beyond regular means of democratic accountability. In making governmental decisions on a range of non-pharmaceutical

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[5] Colin Scott, 'The regulatory state and beyond', https://library.oapen.org/bitstream/handle/20.500.12657/31596/626829.pdf?sequence=1#page=301
[6] Colin Scott, 'The regulatory state and beyond', https://library.oapen.org/bitstream/handle/20.500.12657/31596/626829.pdf?sequence=1#page=301
[7] Colin Scott, 'The regulatory state and beyond', https://library.oapen.org/bitstream/handle/20.500.12657/31596/626829.pdf?sequence=1#page=301
[8] Colin Scott, 'The regulatory state and beyond', https://library.oapen.org/bitstream/handle/20.500.12657/31596/626829.pdf?sequence=1#page=301

interventions (NPIs), many key democratic and governance processes have not only been avoided at the state-level, but this has also been reflected in the marginal role given to public consultation, too often considered unnecessary today in the creation of a vast range of policy.

It was to be expected in a period of emergency from mid-March 2020 that government would take ownership of specific powers at its disposal and make decisions outside of some normal democratic conventions. But at some point, by 10 May, when conditional plans for lifting lockdown were presented, the situation had shifted from its initial emergency phase and thereafter became a challenge for society to live with and adjust to the virus. From that point on, such emergency powers were not sufficiently justified.

Many of the major decisions – including on the public health interventions and associated public spending measures – should have been made democratically. By 'democratically', it would be anticipated in the UK system that this would mean involving parliament and the public more widely in the process of decision-making and debates, instead of referring only to remote and insulated scientific expertise. This would have presented to the public all sides of the political, economic and healthcare evidence through a comprehensive cost-benefit analysis and via ongoing impact assessments. The lesson to be learned for the future is about how to make decision-making more democratic. Regular democratic procedures and the accountability of ministers to parliament and to the public on matters of policy have been in abeyance for 21 months.

There have been seismic impacts on society resulting from our policies and response to Covid-19, but on which little consideration was shown by government as to their likely magnitude. We will be counting the economic costs of lockdown policies for many years to come, not least at this stage, rising inflation, partly resulting from the supply problems, which will likely push consumers to show greater caution in spending and, ultimately, rein in economic growth.[9] The measures taken by Government to support businesses and households cost around £340 billion across the last year and this current one.[10] Having provided over £79 billion-worth of loans, the Chancellor has continued to extend the Government's current Covid recovery loans [under the recovery loan scheme].[11] Even when the economic shock of the pandemic does eventually lessen, it is known that the disease and our responses will have resulted in permanent damage, or 'scarring', to the economy.[12] When we look to individual industries, we find, for example, in

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[9] Those economic factors are discussed in: Daniel Harari, Matthew Keep and Philip Brien, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/
[10] Daniel Harari, Matthew Keep and Philip Brien, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/
[11] Louisa Clarence-Smith, 'Rishi Sunak to extend Covid recovery loan scheme', https://www.thetimes.co.uk/article/rishi-sunak-to-extend-covid-recovery-loan-scheme-gf76nzpsg
[12] Daniel Harari, Matthew Keep and Philip Brien, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

the music world, that more than a third of its workers lost their jobs last year – that is, 69,000 in total – resulting from venues, festivals and tours closing, and the pandemic wiping billions off the value of the sector.[13]

Why should we acknowledge the impacts of lockdowns on non-Covid and wider social and economic outcomes? Because, when we look across the vast spread of the population, our state of sickness and health, our suffering and our hoped for ability to move forward with regular life also took several major blows:

1. **Cancer referrals:** Cancer Research UK estimates that between March 2020 and February 2021, around 430,000 fewer people were on an urgent suspected cancer referral in comparison with the same period the previous year – with April 2020 seeing the number of urgent suspected cancer referrals in secondary care drop to their lowest point (a 60 per cent decrease compared to April 2019).[14]

2. **Mental health:** The Mental Health Foundation's 'Mental Health in the Pandemic' study found that one year on, the crisis had deep emotional impacts on UK adults. Some key findings from the study suggest that although anxiety has fallen since the beginning of the pandemic, loneliness has risen from 10 per cent in March 2020 to 26 per cent in February 2021; while fewer adults feel they are coping well (from 73 per cent in April 2020 to 64 per cent in February 2021).[15]

3. **The elderly:** Research by Age UK on the impact of Covid-19 on older people's physical and mental health painted 'a picture of a substantial group of older people who have been left frightened, depressed and very much alone.' For example, in terms of older people's physical health, it was discovered that a 'significant' number of older people have been left with reduced mobility, and that some older people also admitted to losing interest in food and had stopped eating a sufficient amount. And in terms of mental health, older people have reported an increase their anxiety levels, plus we know the proportion of over 70s experiencing depression doubled since the start of the pandemic.[16]

4. **Stroke:** The Stroke Association's *Stroke recoveries at risk* report 'found that the Covid-19 pandemic has affected every aspect of stroke treatment and care', as well as delaying

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[13] Mark Sweeney and Nadia Khomami, 'More than a third of UK music industry workers lost jobs in 2020', https://www.theguardian.com/business/2021/oct/19/more-than-a-third-of-uk-music-industry-workers-lost-jobs-2020-covid

[14] Cancer Research UK 'Health Professional COVID-19 and Cancer Hub', https://www.cancerresearchuk.org/health-professional/diagnosis/hp-covid-19-and-cancer-hub#HP_COVID-190

[15] Mental Health Foundation, 'Pandemic one year on: landmark mental health study reveals mixed picture', https://www.mentalhealth.org.uk/news/pandemic-one-year-landmark-mental-health-study-reveals-mixed-picture

[16] Age UK, 'The impact of COVID-19 to date on older people's mental and physical health', https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/health--wellbeing/the-impact-of-covid-19-on-older-people_age-uk.pdf

the national progress of stroke initiatives and negatively impacting on research into strokes. For example, 30 per cent of people who had a stroke during the pandemic delayed seeking emergency medical treatment due to Covid-19; the number of stroke admissions across the UK in April 2020 fell by around 13 per cent – 'with fewer people experiencing milder stroke presenting at hospital'; and 'In England and Wales, stroke deaths in private homes were 52% higher than usual during the Covid-19 surge.'[17]

5. **Heart attacks:** Data for out-of-hospital cardiac arrests (OCHAs) suggest that periods of high coronavirus transmission resulted in increased OCHA volumes and lower survival rates. Despite this, however, visits to A&E departments in England during spring 2020 for suspected heart attacks fell by around 50 per cent. Further, research also estimates that approximately 5,000 heart attack sufferers in England may have missed out on potentially life-saving treatment during spring 2020 because of the Covid-19 pandemic.[18]

6. **Non-Covid mortality:** As set out in the summary of this report, ONS figures illustrate an increase of around 20,823 additional deaths in England and Wales in the past four months, compared with the average for the same period in the five years up to 2019 – with 45 per cent of them (9,292 deaths) not involving coronavirus, while 11,531 were linked.[19] It might be considered that those with certain conditions who put off hospital treatment appointments during the lockdowns are now dying from those conditions or other related circumstances.

7. **GDP:** In 2020, the UK saw the steepest drop in GDP since records began (a total of 9.8 per cent). However, some kind of recovery in the spring/early summer of 2021 meant that GDP rebounded and, as of July 2021, is two per cent lower than the pre-pandemic level.[20]

8. **National debt:** When entering the coronavirus pandemic, government debt was equivalent to around 84 per cent of GDP. But by the end of 2020/beginning of 2021, government debt was equivalent to 97 per cent of GDP.[21]

9. **Budget deficit:** In March 2020, only a matter of weeks before the nation entered its first lockdown, the Office for Budget Responsibility (OBR) forecasted a deficit of around £55

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[17] Stroke Association, 'Stroke recoveries at risk report: key findings', https://www.stroke.org.uk/stroke-recoveries-at-risk-report/key-findings

[18] British Heart Foundation, 'Coronavirus and Heart & Circulatory Diseases Factsheet', https://www.bhf.org.uk/-/media/files/research/heart-statistics/bhf-coronavirus-and-heart-and-circulatory-disease-factsheet.pdf?rev=c11de7b99c76456db22724f99dd758b4

[19] 'Unexplained surge in non-Covid deaths triggers calls for probe', https://www.theweek.co.uk/news/science-health/954825/extra-non-covid-deaths-increase

[20] Daniel Harari and Matthew Keep, 'Coronavirus: Economic impact', https://researchbriefings.files.parliament.uk/documents/CBP-8866/CBP-8866.pdf

[21] Daniel Harari and Matthew Keep, 'Coronavirus: Economic impact', https://researchbriefings.files.parliament.uk/documents/CBP-8866/CBP-8866.pdf

billion for 2020/21. Yet in 2020/21, the budget deficit reached a peacetime record of £320 billion.[22]

10. **Unemployment:** By the end of 2020, unemployment levels had risen by around 400,000 to 1.8 million. As such, the unemployment rate rose from four per cent to 5.2 per cent. But unemployment did fall during 2021, and during May-July 2021, the unemployment rate was down to 4.6 per cent.[23]

11. **Hospitality:** The ONS' recent report on the impact of the Covid-19 pandemic on the UK hospitality industry highlights that whilst consumer spending in the sector began to increase in May 2021, it still remains 70 per cent lower than pre-pandemic levels; in May 2021, turnover for the sector also remains one-quarter below the 2019 levels; spending by businesses in the sector has seen smaller increases compared with consumer spending in May 2021 – with payments to suppliers from food and drink businesses remaining about half of pre-pandemic levels; confidence of business survival in the sector began to increase in May 2021 but remains below the all-sector level; and job vacancies in the sector have seen large increases and are higher than pre-pandemic levels, but in June 2021, the number of employees within the sector remained 11 per cent below the February 2020 level.[24]

12. **Tourism:** In the ONS' recent report on the impact of the Covid-19 pandemic on the UK's travel and tourism industry it is noted that the sector was 'heavily' impacted. Some of the key findings were: monthly air passenger arrivals to the UK fell by 98.3 per cent between February-April 2020; 'Accommodation and travel agency businesses saw the sharpest decline in turnover during the first national lockdown, falling to 9.3% of their February levels in May 2020'; 'The proportion of businesses in travel and tourism industries trading peaked at 85% in October 2020, before declining in response to increasing restrictions in November'; and in the three months to June 2020, employment in accommodation for visitors fell by 21.5 per cent in comparison with the same period in 2019.[25]

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[22] Daniel Harari and Matthew Keep, 'Coronavirus: Economic impact', https://researchbriefings.files.parliament.uk/documents/CBP-8866/CBP-8866.pdf
[23] Daniel Harari and Matthew Keep, 'Coronavirus: Economic impact', https://researchbriefings.files.parliament.uk/documents/CBP-8866/CBP-8866.pdf
[24] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021
[25] ONS, 'Coronavirus and the impact on the UK travel and tourism industry', https://www.ons.gov.uk/businessindustryandtrade/tourismindustry/articles/coronavirusandtheimpactontheuktravelandtourismindustry/2021-02-15

13. **Theatres:** During 2020, ticket sales at UK theatres fell by 93 per cent.[26] Consequently, theatres and producers in the UK lost at least £1.04 billion by the end of 2020.[27]

14. **Cinemas:** Total revenues from UK cinemas fell from over £1.2 billion in 2019 to below £297 million in 2020 – the first time since 2011 that UK box office revenue had not exceeded £1 billion.[28] And in August 2021, the first month after Covid restrictions were lifted in England, UK cinema box office takings were still half of their pre-pandemic level.[29]

15. **SMEs:** Evidence collected by the Bank of England on the impact of Covid-19 on small and medium-sized enterprises (SMEs) found that SMEs were hit 'harder than larger businesses' during the pandemic. For instance, the average SME experienced a 30-percentage point reduction in turnover growth due to Covid-19 and the subsequent restrictions.[30]

16. **Business closures:** According to figures compiled by the Local Data Company, over 17,500 chain stores disappeared across the UK in 2020 – a net closure of 9,877 stores.[31]

17. **GPs:** 'Since the start of the pandemic the impact of COVID-19 on primary care, and those working within it, has been significant.' Between April 2020-March 2021, there were 31 million fewer primary care appointments booked in comparison with the previous 12 months. And the way in which appointments take place has also transformed – with March 2021 seeing the highest ever number of telephone appointments in general practice (11.4 million). (This figure was 6.6 million in March 2020 and 3.5 million in March 2019.)[32]

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[26] Statista, 'Percentage change in theatre sales before and after closure due to the coronavirus (COVID-19) pandemic in the United Kingdom (UK) in 2020', https://www.statista.com/statistics/1112653/covid-19-impact-on-theatre-sales-in-the-uk/

[27] Theatre APPG, UK Theatre and Society of London Theatre, 'Subject: The Impact of COVID-19 on the UK's Theatre Industry', https://uktheatre.org/EasySiteWeb/GatewayLink.aspx?alId=3187408#:~:text=For%20most%2C%20re%2Dopening%20a,non%2Dviable%20artistically%20or%20financially.&text=Theatres%20and%20producers%20in%20the,and%20retail%20revenue%20since%20March.

[28] UK Cinema Association, '2020 figures confirm impact of COVID-19 on UK cinema sector', https://www.cinemauk.org.uk/2021/01/2020-uk-box-office-figures-confirm-impact-of-covid/

[29] Ian Young, 'Cinema box office takings at 50% of pre-pandemic levels', https://www.bbc.co.uk/news/entertainment-arts-58270577

[30] James Hurley, Sudipto Karmakar, Elena Markoska, Eryk Walczak and Danny Walker, 'Impacts of the Covid-19 crisis: evidence from 2 million UK SMEs', https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2021/impacts-of-the-covid-19-crisis-evidence-from-2-million-uk-smes.pdf?la=en&hash=FC4EA425DDB9AD8762C268DF73F00FEF2216CAFD

[31] PwC, 'Over 17,500 chain stores closed in 2020 with the impact of the pandemic yet to be felt', https://www.pwc.co.uk/press-room/press-releases/over-17-500-chain-stores-closed-in-2020-with-the-impact-of-the-pandemic-yet-to-be-felt.html

[32] Caroline Fraser and Rebecca Fisher, 'How has the COVID-19 pandemic impacted primary care?', https://www.health.org.uk/news-and-comment/charts-and-infographics/how-has-the-covid-19-pandemic-impacted-primary-care

18. **University students:** The latest report from the ONS on the impact of Covid-19 on students in higher education in England highlighted some key points, including: that students were more likely than the rest of the population to have not left their home/accommodation in the seven days prior to being surveyed by the Opinions and Lifestyle Survey (OPN); and that, according to the Student Covid Insights Survey, student experience had changed because of the pandemic – notably reporting 'lower levels of life satisfaction, life worthwhile and happiness, and higher levels of anxiety, compared with the general population through the OPN.'[33]

19. **Secondary school pupils:** Ofsted research found that Covid-related absences were more prevalent in secondary than primary schools. Additionally, 'Many secondary school leaders said that pupils in all year groups had fallen behind in a range of subjects' – particularly in terms of pupils' 'basic mathematical' and 'basic literacy' skills. Pupils' behaviour and anxiety levels had also emerged as a challenge for many secondary school leaders.[34]

20. **Primary school pupils:** The majority of primary school leaders said that pupils had experienced 'learning losses in many subjects'; and many also 'said pupils were at the same level as they were before March – in other words, had learned little during the first national lockdown – or had even slipped back.' Numerous leaders also pointed out 'that younger pupils had been most negatively affected' – with many seeing 'a negative impact on key stage 1 pupils' social and communication skills, listening skills, speech, phonic knowledge and gross motor skills.' A common area of concern for primary school leaders was mathematics, and 'Even more leaders said that pupils had lost basic literacy skills.' Furthermore, primary school leaders also talked about 'seeing more undesirable behaviours from some pupils', and it was mentioned that 'Some primary-aged pupils were struggling with social skills.' Anxiety was noted to be an emerging challenge by many primary school leaders too.[35]

Whatever reason the government provides, many of the major effects on society were not properly taken into account or not taken into account at all. In Bristol alone, for example, the number of single people in the city who required temporary housing more than tripled during

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[33] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

[34] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[35] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

the pandemic – a 330 per cent increase over the year.[36] It is known that cases of psychosis have risen over the past two years in England as people experienced hallucinations and delusional thinking. There was a 29 per cent increase in the number of people referred to mental health services for their first suspected episode of psychosis between April 2019 and April 2021, one study of the NHS data shows.[37] More than half (52 per cent) of 16-year-olds who took part in a separate study felt their mental and emotional health had worsened during the pandemic, and it was found 'insufficient consideration' had been given to how children and young people's lives would be affected, according to a report from the Northern Ireland Commissioner for Children and Young People (NICCY).[38] In education, school pupils across the UK have lost out on one-third of their learning time amid Covid-19 – even when home lessons are taken into account, another study suggests.[39] They are not only reminders that entire aspects of social and economic policy will need revisiting, but that policies, when brought forward in government, should have impacts, benefits, costs and even alternatives attached to them so they can be publicly assessed and debated with decisions made in light of all those effects.

The shift towards new regulatory forms of governance via elaborate adviser-led networks reflects a move away from the British liberal and democratic tradition. The inclination to accept received instructions and law by executive decree has set aside tests of reasonableness in which policies and facts might be better developed by proofs, evaluation and enquiry – by testing proposals against reality. From government ministers to police services, dogmatism and obedience towards regulation by decree have replaced toleration towards other groups in society who might not believe in total submission to each given state policy.

A parliament which either did not sit or was bypassed by government during the major lockdowns of English society cannot claim to have operated in the interest of a traditional liberal principle, namely, seeking the consent of the governed. The auto-regulatory state has, by its very nature, in turning out so many Covid-regulations, overturned the value of individual liberty in society. Any notion of limited government became inoperable since the protection of civil liberties and freedom to engage in all forms of economic activity was so heavily constrained.

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[36] BBC News, 'Covid: Bristol's homeless more than tripled during pandemic', https://www.bbc.co.uk/news/uk-england-bristol-57288425

[37] Helen Pidd, 'Psychosis cases rise in England as pandemic hits mental health', https://www.theguardian.com/society/2021/oct/18/psychosis-cases-soar-in-england-as-pandemic-hits-mental-health

[38] Robbie Meredith, 'Covid-19: Pandemic had severe impact on young people, says report', https://www.bbc.co.uk/news/uk-northern-ireland-58334583

[39] ITV News, 'Covid: Students lost one-in-three days of schooling during coronavirus pandemic year across UK, study finds', https://www.itv.com/news/2021-07-07/covid-students-lost-one-in-three-days-of-schooling-during-coronavirus-pandemic-year-across-uk-study-finds

Most important to the content of this report, Britain departed (for good or bad) from its regular constitutional checks and balances to ensure the executive aggregated a significant amount of power to itself, while the legislative arm was bypassed, and the judiciary, having been locked down, then faced an unprecedented backlog of legal cases.

The high level of coercive restrictions placed on the population from March 2020 as the primary response to the coronavirus pandemic illustrate that any benefits which have emerged from the restrictions must be weighed against the impacts on the economy, the costs borne by the taxpayer and the impact on civil liberties. Very little of the emergency legislation currently in place should remain once society returns to normality since it lacks credibility in a regularly functioning democratic society. The Coronavirus Act and associated regulations gave the government extraordinary and innumerable powers to restrict liberty in the hope of reducing the transmission of Covid-19. That Act, as originally passed in March 2020, granted the Government various sweeping powers, including the ability to close businesses and schools, and restrict social gatherings. It was renewed again (in October 2021) shortly before this report was published, but there is some consolation in that the most draconian powers under the Act have now been removed.

The extent of those powers exercised by government mean that they should have only been implemented with the authority of parliament. As Keith Ewing, Professor of Public Law at King's College London, observed: the regulations were introduced after parliament rose for recess, while their provisions were subject to over-interpretation in government guidelines and over-application by the police.[40] In that first month of lockdown, at least, Ewing recognised 'a chronic failure on the part of our sovereign parliament to discharge its basic constitutional duties'. Although an emergency, it was 'difficult to recall any institutional weakness or constitutional failure on such a scale at any time in our history, such has been the abdication of legislative authority, financial scrutiny, and ministerial accountability'. As history teaches us, such 'power once given away is rarely recovered to its full extent'.

Lord Sumption's later interventions in October 2020, which we discuss in Chapter 2, have become seminal. 'The British state exercised coercive powers over its citizens on a scale never previously attempted', Sumption observed. The state took legal control (enforced by the police) over the personal lives of the entire population. They told people 'where they could go, whom they could meet, and the only acceptable reasons to leave their home'. This deep and most

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[40] K.D. Ewing, 'Covid-19: Government by Decree',
https://www.tandfonline.com/doi/full/10.1080/09615768.2020.1759398

'significant interference with personal freedom in the history of our country' was authorised by ministerial decree, with minimal parliamentary or public involvement.[41]

The point made by Sumption should be clear: powers as intrusive as those which the government has exercised should not be available to a minister on a mere claim. Police should not have been given such arbitrary enforcement powers. Parliamentary authority should have overseen all of those measures and then demanded that the government explain its reasons and the evidence behind them. MPs should have been free to ensure proposals could be properly debated, amended or rejected. The government's imposition by decree, whether lawful or not, could not be said to be consistent with the country's constitutional traditions.[42]

Given the emergence of the Covid-regulatory state, it would be incorrect to assume that our 'partly written but wholly uncodified' constitution was at fault, when in fact, it has often been a saving grace during wars, emergencies and peacetime Britain. The human rights barrister Adam Wagner disagrees, stating that, 'In sum, we have discovered that our so-called unwritten constitution is simply too weak to protect our basic liberties.' Accordingly, he contends that there is now 'the opportunity to rethink, and codify the ground rules of our freedoms' because 'while freedom may occasionally need to be checked and balanced, this must… always be temporary, proportionate, and—just as much—argued for and explained.'[43] This view is often expressed among Whitehall professional experts, in common with pro-codification legal theorists, arguing that if we seek to increasingly codify our arrangements, if we accept the basis for a written constitution, then things could have been better – indeed, things will be better if we adopt them now. It is a flawed argument. In fact, the unwritten constitution gave us some of the flexibility required to be resourceful, responsive and flexible against a disease about which we previously knew very little – but that doesn't mean ignoring process, debate and scrutiny. A plurality of experts also think we would be far better off if Exercise Cygnus in 2016 had been fully built upon and a fully written set of guidelines had been concluded, as we then would have been more readily prepared to manage the threat of Covid-19.[44]

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[41] Lord Sumption, 'Government by decree: Covid-19 and the Constitution', https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf
[42] Lord Sumption, 'Government by decree: Covid-19 and the Constitution', https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf
[43] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay
[44] Exercise Cygnus, a cross-government exercise to test the UK's response to a serious influenza pandemic, took place over a course of three days in October 2016 and involved over 950 people from the Department of Health and Social Care and 12 other government departments, as well as NHS Wales, NHS England, Public Health England, local public services, numerous prisons, and staff from the Scottish, Welsh and Northern Ireland governments. However, despite Exercise Cygnus exposing failings, the government's planning for a future pandemic did not formally change after the exercise had been undertaken.

On that logic, by having a written constitutional text and preparing a series of manuals for every eventuality in a serious influenza pandemic, the assumption is that we can know and understand all threat of all diseases and the next threats that come up on our horizon, which is both mythical and misguided. It is arguable that a centrally-held robust risk planning document, complete with risk appetite and risk tolerance criterion, as the basis for choosing which trade-offs should be made in emergencies, would have made matters worse, if not inhibited government from taking the necessary action. Nor can we conclude from those countries that have more deeply codified written constitutions that they fare any better in protecting individual freedoms, nor in preventing excess fatalities during the pandemic.

The next threat faced by the government after Covid-19 is to a large degree unknowable and unlikely to be a comparable disease – of course, governments are short-termist in seeking results within four to five years, and so, with Whitehall advice, will plough billions of taxpayers' money into those unknowable threats or opportunities in the pretense it can make the future and the unknowable both rational and knowable.

In the face of radical uncertainty, it is not the duty of authorities to enhance all efforts to try to predict an unknowable future but to create strategies which will prove resilient to events we cannot anticipate.[45] The public debate on Covid-19 and its responses have often disregarded the idea that we all faced a situation which John Kay and Mervyn King have called 'radical uncertainty'. They find that uncertainty can be generated out of an incomplete knowledge of the connection between our present practices and their future outcomes.[46] Some uncertainties are resolvable by understanding what the distribution of outcomes might be, but with radical uncertainty, there is no means to resolve the certainty because we just do not know. It cannot be explained therefore in probabilistic terms because we, for example, do not know the kinds of things that might happen.

Faced with uncertain futures of different kinds, there is clearly going to be speculation and disagreement which cannot be immediately resolved. Many from across statistical science and social science disciplines hold that probabilistic reasoning can tame radical uncertainty. Instead of recognising radical uncertainty and producing policies and strategies that can withstand many alternative outcomes, we tend to rely on models which 'claim knowledge of the future that we do not have and never could have'.[47] This is dangerous. To therefore describe a future catastrophic pandemic or even an environmental disaster in probabilities is to mislead the governed population – other than in telling ourselves stories – because such extreme events arise on some contingency that we have failed to imagine, or their likelihoods naturally

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[45] Kay, John and King, Mervyn, *Radical Uncertainty: Decision-making for an Unknowable Future*, London: The Bridge Street Press, 2020, p. xx.
[46] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p.13.
[47] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, pp. 39-40.

exaggerated by fear. That is not to say a careful and pragmatic case cannot be made for reform in light of the vastly encroaching but secretive forms of law-making that occurred during the pandemic.

1. Building Back Better – the remaking of our democratic model

Throughout the pandemic, the UK has been caught not only between the necessary defence against the ravages of a disease about which so little is still known, but unprecedented forms of governance which have been able to replace regular representative democratic features with those of more technocratic models. While many would expect the British model, and indeed the Westminster model of governance, to maintain its stability, we are still faced with the unfortunate outcome in which technical and scientific experts are being given an even stronger place in policy-making.

Two researchers at the University of Finland, Laura Rapeli and Inga Saikkonen, explore how the pandemic will impact on 'the already uncertain future of democracy'.[48] Interestingly, the authors expected that the 'pandemic will not have grave long-term effects', as 'Previous research suggests only short-term impacts in trust levels and no consequences whatsoever for the more crucial factors such as party identification'. They consider that the period between the two world wars – 'which was riddled with economic crises that followed one another' – showed 'that the political institutions in established democracies were almost without exception able to maintain their stability and survive under harsh conditions.'

For established democracies, Rapeli and Saikkonen found both previous scholarship and preliminary analyses on the impact of the pandemic suggested a 'significant but short-lived' popularity increase for political leaders. They find only 'small and positive yet fleeting effects on attitudes such as political trust'. They also expected no 'impact on party identification or other factors, which might cause permanent political realignments.' In contrast, for those democracies already experiencing backsliding, they expect that the more immediate effects are likely to diverge from established democracies.

Much of the evidence, in their view, points towards effects that are visible only on the surface, but not in the foundations of Western democracy. They consider that even when established democracies have been tested, they have endured, although they do point out that those democracies have not been essentially tested by pandemics or similar events in the contemporary media landscape. However, they also point towards findings from Spain which have shown that where there has been 'demands for more expert-led decision-making' as a result of the pandemic, there are potential long-term repercussions in which experts are given a deeper role in policy-making, 'pushing representative democracy a notch toward a more technocratic model of democracy.'

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[48] Lauri Rapeli and Inga Saikkonen, 'How Will the COVID-19 Pandemic Affect Democracy?', https://www.berghahnjournals.com/view/journals/democratic-theory/7/2/dt070204.xml?ArticleBodyColorStyles=pdf-3889

The pandemic has also exposed, if not amplified, the power of the executive and nation-state, if not their limitations. Early in the crisis, Afsahi et al.[49] suggested that the Covid-19 pandemic has been 'the hour of the executive,' and executives in countries like the UK have proven to be 'slow, secretive, and indecisive, undermining the very grounds upon which states of emergency are declared.' In contrast, 'other key democratic institutions… have proved flexible and resilient.' Accordingly, there is 'space to consider whether emergency politics has to be conducted by executive fiat' and in secrecy, albeit it would be difficult to argue now that government was always indecisive for the duration of the pandemic.

Just as the authors claim the pandemic has proven to be 'the hour of the executive', they say it has also proven to be 'the hour of the nation-state'. Despite Covid-19 being a global issue, 'the primary actors in the policy response have been nation-states.' This led to the almost universal closure of national borders and bringing absentee citizens back 'home' so that nation states were able to protect their own citizens. This has been the norm throughout the pandemic: 'national responses that prioritize national populations, with little international collaboration.' (Although there have been some acts of solidarity, such as equipment donations.) There is therefore an obligation on government to understand why in the 'hour of the executive', the politics of pandemics does not have to be conducted by executive fiat. Where governance has strayed towards technocratic controls, it is essential to reclaim representative democracy. The other side of the coin in this argument is also that the Covid-19 pandemic drastically exposed the underlying flaws of globalisation and the role of many international institutions, including the WHO. As Niall McCrae and M.L.R. Smith put it in one report for Civitas, the ideology of globalisation based on the notion of an increasingly borderless and interdependent world, and in which the nation state would whither, is now seriously in question.[50] That is surely because the *demos* of democracy identify mostly with the nation state and expect it to be responsive to its needs.

Over the past 21 months of the pandemic, the UK has faced substantial challenges, and the government has responded by introducing recovery policies 'to build back better.'[51] Businesses and schools have closed, families and friends have been kept apart, and, tragically, lives have been lost. An unprecedented state-backed economic package, providing businesses and individuals with support, has meant spending hundreds of billions to support people's jobs,

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[49] Afsoun Afsahi, Emily Beausoleil, Rikki Dean, Selen A. Ercan and Jean-Paul Gagnon, 'Democracy in a Global Emergency: Five Lessons from the COVID-19 Pandemic', https://www.berghahnjournals.com/view/journals/democratic-theory/7/2/dt070201.xml?ArticleBodyColorStyles=pdf-3139

[50] Niall McCrae and M.L.R. Smith, 'Year of the Bat: Globalisation, China and the Coronavirus', https://civitas.org.uk/publications/year-of-the-bat/

[51] HM Treasury, 'Build Back Better: our plan for growth', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968403/PfG_Final_Web_Accessible_Version.pdf

businesses, and public services across the UK. Equally, as the 'Build Back Better' plans acknowledge,[52] Covid-19 and the restrictions put in place to stop the spread of the virus caused the largest fall in annual GDP in 300 years. If we are to genuinely rebound to build back better, then an essential feature is to build back democracy, return the lost sense of consent and governance in decision-making, and to reassess the architecture within the UK state which encourages the continual deployment of draconian restrictions ill-suited to peacetime government, and indeed to 'build back better.'

The 'Build Back Better' policy should therefore apply as much as to rebuilding our failed structures of governance as to the reform of our public health and financial institutions, as well as reigniting the growth potential in the economy. To return from a flawed regulatory state model – in which laws are routinely promulgated by decree, without a measurable impact being made of them – will require a commitment to more robust democratic standards. In what became the hour of the executive, the politics of the pandemic – driven by government and its institutions – must learn to navigate a path away from government through executive fiat. Where governance processes have further moved towards technocratic controls, it is even more essential to return to the practices of our representative democracy.

The opportunity is open for government to create a guiding philosophy and recommendations (as described in this report) that meet the challenges faced during the current pandemic so that practical lessons can be learned for future governance arrangements. Amongst those democratic challenges are the decline in transparency, openness, accountability, responsibility, proportionality, scrutiny and timeliness of reporting to the public. These are the principles on which free and functioning societies depend.

At the time of writing, the executive process of increasing regulatory control is still in full flow. Several parts of the Coronavirus Act are still in operation, and while official statistics from the ONS tell us that the presence of antibodies to Covid-19 among adults – indicating either that a person previously had the infection or has been vaccinated – is at 93.6 per cent in England,[53] the government continues to bring forward potential lockdown scenarios and significant restrictions under the Winter Plan for 2021, while continually referencing proposals for vaccine passports in certain venues.[54]

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[52] HM Treasury, 'Build Back Better: our plan for growth', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/968403/PfG_Final_Web_Accessible_Version.pdf

[53] ONS, 'Coronavirus (COVID-19) latest insights: Antibodies', https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19latestinsights/antibodies

[54] Peter Lloyd, 'Tony Benn got it right about democracy', https://www.conservativewoman.co.uk/tony-benn-got-it-right-about-democracy/

There are many of our democratic values and processes which should now be better protected, if not restored. Transparency should be recognised as vital not only to the delivery of an emergency response but to the essence of British democracy, to scientific, parliamentary and public scrutiny of an otherwise unwieldy set of executive actions such as blanket cancelling of events, lockdowns and the post-November 2020 tiered restrictions. There ought to be a greater commitment to 'openness' as a principle of public life, of government and of everyday parliamentary accountability. Given that we set aside central elements of that accountability in the UK coronavirus response, it remains of vital importance for parliament itself to double down on vertical accountability – ensuring citizens can hold their MPs to account – as well as horizontal accountability – ensuring MPs and peers directly hold the executive to account on policies as varied as the test and trace programme, vaccination programmes and Covid passports, all the way through to tiered or full lockdown restrictions.

A foundational principle of that accountability is ensuring responsibility at all levels of public office. It will mean accepting the strengths and weaknesses of the various Covid restrictions that have been introduced since March 2020. The responsibility that is needed reflects a realistic appreciation of the potential negative impacts of policy and of managing risks. In that context, responsible government would have to be clearer about the public trade-offs, or balance of harms, that are necessary in the pursuit of a specific policy. But a commitment to responsible government, now and in the future, should not be confused with state commitment to risk-aversion at all costs. Nor should the armchair philosophers of hindsight – probing why we have not been preparing for an unknown or unprecedented virus for the past five years – enable a quest for oracle-searching to be confused with responsible government. The past can often tell us many things, but it does not automatically provide us with flexible, responsive, pragmatic and responsible answers that fit the existing governance structures.

To restore commitments to accountability and responsibility, it remains imperative within the English system to only make laws or regulations where it is deemed necessary, proportionate, justified and appropriate. The government's use of the Coronavirus Act 2020 and Public Health (Control of Disease) Act 1984 is at the centre of why we might wish to review our laws in a fair and liberal society. An almost unanimous judgement from all sides of the debate recognises that the scale of restrictions has drastically eroded liberties during the lockdowns, as well as under the different forms of regionally-applied restrictions. The question is whether such restrictions, even at a minimal, less intrusive or more localised level, should ever be used again, given the likely corrosive effects they have had on the population as a whole.

To tackle the forfeiting of scrutiny during the pandemic, we ought to review why the UK does not seem to have a systematic process for robust scrutiny of all public bodies. How indeed should we scrutinise the elaborate networks that resulted in a narrow and limited band of advisory groups – mainly SAGE and its sub-committees – from setting out all restrictions for

society over the past 21 months? In the absence of robust scrutiny procedures, some pivotal questions were never properly answered as to the viability or significant costs of virus-related and testing policies.

Given the overnight creation of entirely new public health bodies during the pandemic – the Joint Biosecurity Centre (JBC) and UK Health Security Agency (UKHSA), as well as the elevation of SAGE and the demise of Public Health England (PHE) – it is justifiable to question what is happening to our sense of accountability and regular government functioning, and the frequently unscrutinised role of the ALBs. For far too long, many of the ALBs have been deciding on huge swathes of government policy, yet insulated from electorally-authorised sources of authority, namely parliament. It is well overdue for the UK authorities to review how government directs policy and parliament enacts law through such bodies in a way which no longer appears accountable to the electorate. Britain has spent the past six years engaged in a deep constitutional debate as to where democratic and accountable decision-making should reside within our system. After the pandemic, we might necessarily ask, does the same question in principle apply to our unhealthy reliance on insulated ALBs?

Transparency of decision-making

If there is one aspect of our democratic standards that fell by the wayside during the pandemic, it is the deliberate setting aside of transparency. In an article for *The Conversation,* one team of academic researchers – Chris Zebrowski, Daniel Sage and Nina Marie Jorden – identified a series of helpful questions which they believe should be addressed in a Covid-19 public inquiry.[55] One such question being, 'Was so much secrecy necessary?' Even though the government eventually, and after considerable pressure, disclosed the composition and minutes of SAGE meetings, 'local authorities still struggled to access vital information held by central government'. And so, whilst the authors acknowledged the necessity of some restrictions for national security and so forth, they also emphasise that 'maximising the free flow of information is essential to the success of an emergency response, not to mention democracy itself.'

Transparency is vital not only to generating an effective emergency response and to democracy, but to scientific, parliamentary and public scrutiny of otherwise unwieldy executive policies. In January 2021, the House of Commons Science and Technology Committee published its analysis of the way the government received and applied the scientific advice and evidence

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[55] Chris Zebrowski, Daniel Sage and Nina Marie Jorden, 'Five questions that need answering in a COVID public inquiry', https://theconversation.com/five-questions-that-need-answering-in-a-covid-public-inquiry-158560

during the first period of the coronavirus pandemic (up to autumn 2020).[56] [57] They argued that transparency of scientific advice is essential to enable – in the scientific tradition – rigorous scrutiny which promotes public confidence in the decisions being made. They found an initial lack of transparency about who the scientists serving on the Government's advisory body, SAGE, were and what evidence and scientific papers their advice drew on. They set out recommendations on how decisions ought to be made from as wide and appropriate a range of disciplines and perspectives as necessary. They suggested the initial arrangements around SAGE were not open enough. Whilst it might be conceded that this later improved, the Committee were concerned that there remained 'insufficient visibility as to what advice was given to the Government and over the transparency of the operation and advice of the new Joint Biosecurity Centre.'[58] Concern for transparency has not dimmed for the entire duration of the pandemic.

During the first wave of infections, the results of a survey by researchers investigating public perceptions of the UK government's response to the pandemic highlighted multiple themes.[59] Among them was 'Justifying a lack of transparency', since a recurrent theme had been explanations of why the government was not able to divulge all information. Most commonly, respondents said 'the government had to balance transparency with an avoidance of "panic", "hysteria" or "civil unrest".'[60] There was also the possibility that attitudes of (mis)trust towards the government's Covid-19 response could be influenced, not only by an assessment of pandemic management, but also by 'broader perceptions and past assessments of the government and public institutions.'[61] Moreover, whilst some accepted that knowledge about Covid-19 was initially limited, there were significant anxieties expressed about the kind of

[56] UK Parliament, 'Covid-19: How has the Government received scientific advice, and how has the advice been used? Cross-party group of MPs publish analysis', https://committees.parliament.uk/committee/135/science-and-technology-committee-commons/news/138245/covid19-how-has-the-government-received-scientific-advice-and-how-has-the-advice-been-used-crossparty-group-of-mps-publish-analysis/

[57] Science and Technology Committee 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf

[58] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://committees.parliament.uk/publications/4165/documents/41300/default/

[59] Luisa Enria, Naomi Waterlow, Nina Trivedy Rogers, Hannah Brindle, Sham Lal, Rosalind M. Eggo, Shelley Lees and Chrissy h. Roberts, 'Trust and transparency in times of crisis: Results from an online survey during the first wave (April 2020) of the COVID-19 epidemic in the UK', https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0239247

[60] Luisa Enria, Naomi Waterlow, Nina Trivedy Rogers, Hannah Brindle, Sham Lal, Rosalind M. Eggo, Shelley Lees and Chrissy h. Roberts, 'Trust and transparency in times of crisis: Results from an online survey during the first wave (April 2020) of the COVID-19 epidemic in the UK', https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0239247

[61] Luisa Enria, Naomi Waterlow, Nina Trivedy Rogers, Hannah Brindle, Sham Lal, Rosalind M. Eggo, Shelley Lees and Chrissy h. Roberts, 'Trust and transparency in times of crisis: Results from an online survey during the first wave (April 2020) of the COVID-19 epidemic in the UK', https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0239247

evidence being used to make decisions and how this evidence was conveyed. Respondents in all groups expressed concern about the balance of scientific input against political or economic considerations. Concerns were also expressed with regards to government communication as there was a perceived lack of coherence and clarity in messaging, particularly in relation to contradictory statements and frequent policy changes. The study also identified questions raised about the political decision-making process. The 'responses centred on a wish for more transparency', not only on 'key statistics' but also on 'how decisions are made.'[62] That is, the need for transparency focused not only on accessing key information – but who was making those crucial decisions.

The lack of transparency by ministers, at several critical junctures, suggested that ministers themselves were not making the decisions at all. For example, the Public Administration and Constitutional Affairs Select Committee in the House of Commons[63] raised early concerns over transparency in relation to the initial lockdown in 2020. The Committee called it 'deeply worrying', 'lamentable' and 'unacceptable' that ministers were not able to answer basic questions about the decision to lift the first lockdown. Furthermore, as the decision to lift a lockdown would have taken into account a range of factors, the Committee said they believed 'such decisions can only be made by the Centre of Government, in the Cabinet Office or

[62] Luisa Enria, Naomi Waterlow, Nina Trivedy Rogers, Hannah Brindle, Sham Lal, Rosalind M. Eggo, Shelley Lees and Chrissy h. Roberts, 'Trust and transparency in times of crisis: Results from an online survey during the first wave (April 2020) of the COVID-19 epidemic in the UK',
https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0239247
[63] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions',
https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062
The Public Administration and Constitutional Affairs Committee said of public communication, behaviour and trust:
• Whilst the government 'has made significant steps in the presentation of data throughout this pandemic…it is still presenting some graphics which do not meet the basic standards that we would expect.' Any graphics which the government decide to use 'should meet Government Statistical Service good practice guidelines on data visualisation', as well as always meeting the accessibility regulations.
• 'Statistics quoted by Ministers have not always been underpinned by published data'. This not only goes against the UKSA Code of Practice, but it could also mean 'numbers may be used to make politicised points' and that 'the public, journalists and Parliamentarians have no way of verifying the information shared.' As a result, 'constructive debate cannot happen.' Therefore, when statistics are quoted, 'the underlying data must be published', and when ministerial statements are published on government websites, hyperlinks/footnotes must be included which direct to the data.
• Clarity is needed 'about what has underpinned Government decisions' because, 'as it stands, the public is not well informed about the role of SAGE advisors and might not be aware that differences of opinion are an inherent (even encouraged) element of discussion in that forum.' So, the Committee call 'for some expectations to be laid about the appropriate way to communicate'. They therefore suggest 'The SAGE secretariat should produce guidance for members on how to engage with the media'.
• As 'Building trust between leaders and the public is essential', 'Government communication needs to focus on informing the public openly and honestly.' The Committee called it 'disappointing' 'that the way data has been presented might have undermined public trust' in order to create 'a more favourable view of the Government', for instance.

Number 10.'[64] But when the Committee asked about these decisions, they found 'the Cabinet Office has passed the buck to the Department of Health and Social Care.' And so, the Committee stressed that it remained 'vital' that lessons are learnt, and changes (at that stage) were made for the duration of the ongoing pandemic.

As the Committee raised serious concerns about the 'lack of transparency and clarity in decision-making', they urged a response by the Cabinet Office to their report, explaining the range of data and information which would be used in a decision to lift current and future lockdowns. They considered at that point that the government should not make any further changes to the roadmap out of lockdown because 'changes in the framework to date have not always appeared to reflect new information'. This amounted to 'a moving of the goalposts, which creates uncertainty' and 'makes it impossible to see trends'.[65]

Due to 'unclear' data, they said, 'Lockdown decisions have been met with confusion'. Initially, data was not available to local leaders so that they could understand tiering decisions, and there were 'no adequate frameworks for escalation and de-escalation in place.' Therefore, they suggested that 'The new roadmap must be updated to point to where data can be found under each indicator.'[66] They thought that roadmap indicators should be added to the dashboard, with clear links through to the data at lower local authority level underpinning each one. The Committee also urged government to publish thresholds for tiering decisions to make it easier for local authorities and businesses to plan. In that report, the select committee identified that sectors such as hospitality and entertainment were yet to see 'sufficient data to underpin decisions relating to their industry.' For that reason, the data underpinning the restrictions in place for businesses at each step of roadmap should have been published (including hyperlinks to the data).[67]

The relevance of public transparency to both lockdown and the role of hospitality in serving society more broadly became immediately obvious. By 20 March 2020, measures were taken for bars, restaurants and shops to close, and new financial measures brought forward to

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[64] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062

[65] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062

[66] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062

[67] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062

support employers and employees. However, a report by Christopher Snowdon of the Institute of Economic Affairs (IEA) following the UK's first national lockdown (and updated during England's second lockdown) criticised the government's decision to close hospitality venues. Snowdon examined data which shows that of all infected individuals contacted by NHS Test and Trace, fewer than five per cent had close contact with another person in a hospitality venue; the 10 p.m. 'curfew' on venues was not associated with a decline in the transmission of Covid-19; and neither were complete pub closures in local areas like Leicester associated with a decline in transmissions. Furthermore, evidence produced by SAGE to justify the closure of hospitality in areas the government identified as being in Tier 2 and Tier 3 was 'tenuous' and particularly 'harsh and discriminatory' since gyms, hairdressers and churches could remain open in Tier 3.[68]

The point on transparency was continually made clear to government during the pandemic and after the initial lockdown – particularly by the Public Accounts Committee – that lessons were not being learned ahead of a potential subsequent (second) spike of infections.[69] It said the Department for Business, Energy and Industrial Strategy had 'nothing convincing to say' about what lessons it might have learned from the implementation of the business support schemes.[70] The parliamentary committee found that those issues had been compounded by a lack of transparency by government on critical issues relating to its decision-making in responding to the pandemic. At that stage, they called for the Cabinet Office and the Treasury to be more open and transparent about the planning and preparations across government for a possible second infection peak.[71]

The author of this report described early on in the pandemic that the membership and expertise of SAGE came under intense public scrutiny, and that there were growing calls for transparency.[72] In *A hat trick of failures*, the membership of SAGE and other Cabinet-coordinated expertise was shown to be not as welcoming to diverse views as might be desirable. Several virologists, economists, and modelling experts (primarily those who took a very different view from the Imperial College strands of research) seemed to be 'shut out of the

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[68] Christopher Snowdon, 'Pubs and COVID-19: Flawed claims and faulty reasoning', https://iea.org.uk/publications/pubs-and-covid-19-flawed-claims-and-faulty-reasoning/
[69] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/
[70] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/
[71] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/
[72] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

government advisory bodies'.[73] For those advising in the inner sanctum, SAGE guidance seemed to suggest – and several MPs and select committees supported the view – that its members should in fact develop a high profile. It offered a perverse, muddled and anarchic transparency through the opinions of individual advisers rather than transparency in government.

SAGE's reliance on unique, untested, predictive modelling experiments by a small group of scientists are now well-voiced concerns. The opaque institutional processes of the Government Office for Science (GO-Science) ensuring SAGE draws upon a wide range of expertise and on the best advice available were acknowledged. The government chief scientific adviser (GCSA) appoints SAGE members, though GO-Science retains the membership lists for the different types of crises. During a public health emergency, SAGE is co-chaired by the GCSA and chief medical officer (CMO).[74] As a result, SAGE meetings throughout the pandemic have been co-chaired by the GCSA, Sir Patrick Vallance, and the CMO for England, Professor Chris Whitty, with the secretariat operated through GO-Science.[75] However, if scientists were not on the far-from-transparent Cabinet Office lists, it seemed they weren't to be consulted, just as corporations not on the list were not asked to manufacture PPE. They seemed not to be trusted by government.

Openness in government

Openness is a principle of public life, of government and of everyday parliamentary accountability. The well-respected 'Seven Principles of Public Life' (described below) outline the approach that public office-holders must follow – including 'openness'. In other words, those in public life should take decisions in an open and transparent manner. It also indicates that information should not be withheld from the public.

The openness of government to scrutiny has been remarked upon as fundamental but also wrapped up in several other democratic considerations. As pointed out by Alexandra Runswick (a former Director of Unlock Democracy which campaigns for more participatory democracy) – during a crisis, it is essential to have an open government.[76] 'Honest, transparent and timely reporting of developments' is seen by Runswick as crucial for maintaining both public trust and

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[73] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

[74] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf

[75] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://committees.parliament.uk/publications/4165/documents/41300/default/ para 15

[76] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf

cooperation, and so any 'attempt to withhold, suppress or manipulate information is likely to exacerbate the crisis'.[77] In common with several other analysts, she remarks on how parliament went into recess one week early after the Coronavirus Act was passed – meaning 'there was very little opportunity to formally scrutinise the government's handling of the crisis'.[78] In that sense, MPs had no way of engaging with the key issues.

The Seven Principles of Public Life[79]

'The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder' and 'to all those in other sectors delivering public services.' They are:

1/Selflessness.
'Holders of public office should act solely in terms of the public interest.'

2/Integrity.
Holders of public office must not place 'themselves under any obligation to people or organisations that might try inappropriately to influence them in their work'; and 'should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. Additionally, 'They must declare and resolve any interests and relationships.'

3/Objectivity.
'Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.'

4/Accountability.
'Holders of public office are accountable to the public for their decisions and actions'. As such, they 'must submit themselves to the scrutiny necessary to ensure this.'

5/Openness.

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[77] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf
[78] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf
[79] Committee on Standards in Public Life, 'The Seven Principles of Public Life', https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2

'Holders of public office should act and take decisions in an open and transparent manner.' And unless there are clear and lawful reasons to do so, no information should be withheld from the public.

6/Honesty.
'Holders of public office should be truthful.'

7/Leadership.
Holders of public office should not only show these principles in their behaviour but also 'actively promote' and 'robustly support' them. Further, they must 'be willing to challenge poor behaviour wherever it occurs.'

The pre-pandemic *modus operandi* prevailed because, in Runswick's view, even when parliament is sitting, information release remains very much in the power of the executive, who are, on balance, unlikely to concede that power. The challenge of openness and scrutiny is that ministers' instincts are often 'to shut down and close ranks' – which, as Runswick describes, was the immediate response when it was revealed that the prime minister had not attended five COBR meetings as the crisis was developing. The alternative in this situation could have been for the UK to have adopted a similar approach to New Zealand authorities, who created a new select committee, with an opposition majority, and when their parliament went into recess, to allow for scrutiny and monitoring of the government's response. The UK therefore potentially missed an opportunity which 'would have been a significant improvement'.[80]

The importance of an open and transparent government has been discussed and there have been ongoing commitments over the past decade from Conservative-led administrations.[81] It is said that this sentiment towards openness has not changed. As noted by Grant Dalton of the Institute for Government (IfG), it 'is a key way for the government to maintain trust in its decisions and can deflect accusations of cronyism.'[82] If a government is accused of lack of transparency, then it must be recognised to allow improvements to be made. This would also 'give civil servants and ministers the impetus to improve flagging transparency processes.'[83]

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[80] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus'
[81] For example, see Cabinet Office, '2010 to 2015 government policy: government transparency and accountability', https://www.gov.uk/government/publications/2010-to-2015-government-policy-government-transparency-and-accountability/2010-to-2015-government-policy-government-transparency-and-accountability
[82] Grant Dalton, 'Michael Gove is wrong to dismiss complaints over government's Covid-19 transparency', https://www.instituteforgovernment.org.uk/blog/michael-gove-covid-transparency
[83] Grant Dalton, 'Michael Gove is wrong to dismiss complaints over government's Covid-19 transparency', https://www.instituteforgovernment.org.uk/blog/michael-gove-covid-transparency

The Government has – in the words of the Public Administration and Constitutional Affairs Committee (PACAC) – imposed 'some of the greatest restrictions on the people in recent history.' Accordingly, they found that making the data which has underpinned decisions 'available is not just a moral or democratic question, it is also central to the response'. In the last year, they said that as 'individuals have made unprecedented changes to their lives', it is essential that they 'understand the purpose of those requests if they are to be expected to abide by them, and we have heard throughout this inquiry that transparency builds trust and trust aids co-operation.'[84]

Researchers at the Institute for Government have said of openness and transparency that the government did not always share information about coronavirus in a way that seemed designed to encourage a change in behaviour, and that information 'was also hard to use or understand'.[85] For instance, they highlight that departments have been 'been slow to publish information about their spending, failing to meet transparency commitments made by previous governments'; that there has been 'last-minute announcements of new localised restrictions, pre-briefing of new restrictions to sections of the media; 'contradictory information published by different departments'; and that the government has sometimes presented key metrics in misleading ways.[86] Despite Matt Hancock, the former Health Secretary, stressing a commitment to 'openness and transparency',[87] it has therefore been widely observed that the Government has not consistently shown itself to be open and transparent throughout the pandemic.

Accountability to parliament and society

There are central elements of accountability in the UK context – both with the duty of government to the health and welfare of the general public and the accountability of MPs in scrutinising Covid-related law in parliament on behalf of the public. As stated in a governmental research publication on international development in 2017, parliamentary transparency is also important for both vertical accountability (that is, allowing citizens to hold their MPs to

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[84] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80305.htm
[85] Institute for Government, 'Communications and transparency', https://www.instituteforgovernment.org.uk/publication/whitehall-monitor-2021/transparency
[86] Institute for Government, 'Communications and transparency', https://www.instituteforgovernment.org.uk/publication/whitehall-monitor-2021/transparency
[87] Andrew Grice, 'Matt Hancock has questions to answer – but transparency is a flexible friend for this government', https://www.independent.co.uk/voices/dominic-cummings-matt-hancock-parliament-b1855001.html

account) and horizontal accountability (for legislators to hold the executive to account).[88] Parliament's centrality in holding the Government to account is the foremost principle. MPs must be free to hold Government to account over departments being adequately resourced, to ministers responding fully to questions, and to provide information which may not already be publicly available.

Professor of Politics at King's College London, Andrew Blick, has considered some of the implications of the Covid-19 pandemic for the UK constitution. In one part of his report, he states that public sector entities 'can now expect a period of new, extensive demands', as well as Parliament and the courts having their functions expanded.[89] Therefore, whilst Parliament has traditionally 'afforded a degree of discretion to the executive in emergency circumstances', 'the executive needs to be as cooperative and forthcoming with Parliament as is reasonably possible' so as to ensure 'meaningful accountability'.

If we are to expect improved accountability and public legitimacy for policies during a crisis, this process necessarily relies on ensuring those policies have been arrived at through a democratic process. In the Australian context, the legal expert Eric Windholz at Monash University in Melbourne distilled public legitimacy of Covid restrictions into a number of key domains, one of which is the legal dimension.[90] The institutions and processes need to be acceptable and credible because they are legally valid, having been authorised through a constitutional, democratic process.

Accountability is a primary feature of our politics. A report on Covid-19 and parliament by the House of Lords Select Committee on the Constitution has recommended that although keeping the public informed during the pandemic is paramount, 'the Government must adhere to the Ministerial Code and prioritise Parliament when making significant policy announcements, on the pandemic and more generally,' to ensure 'Parliament's centrality in holding the Government to account be respected.'[91] They concluded:

- During the pandemic, the high volume of statutory instruments (SIs) and the use of fast-track procedures 'severely limited Parliament's ability to scrutinise significant powers.'

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[88] Mills, L. (2017). 'Parliamentary transparency and accountability'. K4D Helpdesk Report. Brighton, UK: Institute of Development Studies, https://assets.publishing.service.gov.uk/media/59785450ed915d312c000005/081-Parliamentary-transparency-and-accountability.pdf

[89] Andrew Blick, 'The multiple and profound constitutional implications of COVID-19', https://blogs.lse.ac.uk/politicsandpolicy/covid19-uk-constitution/

[90] Eric L Windholz, 'Governing in a pandemic: from parliamentary sovereignty to autocratic technocracy', https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1796047?needAccess=true

[91] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/408.htm#_idTextAnchor054

And 'The blurring of legislation and guidance undermined public understanding of the rules.'

- The challenges faced by the Government during the pandemic are not a justification for 'poor, partial or non-answers' to written questions.
- The Government should ensure 'that departments are adequately resourced to respond fully to questions, including by providing information beyond that already in the public domain, in a timely manner. Doing so is an important part of ministers' accountability to Parliament.'
- In respect of House of Lords procedures, the use of hybrid proceedings and the loss of spontaneity in members' interactions during a bill's committee stage, as well as the need for speakers lists on more business, resulted in the House's essential scrutiny role, including its capacity to hold the Government to account becoming less effective.
- Some members have not been able 'to make a meaningful contribution' to items of business, which the hybrid procedures may have worsened, given that this was an issue pre-pandemic.[92]

Each of those procedural problems has arguably hampered, if not eroded, our regular principle of accountability. Although those remote proceedings had arguably been of benefit to peers with disabilities, health concerns or caring responsibilities, or who are geographically distant, the Constitution Committee found it important for government to consider the longer-term consequences of any changes to proceedings for the overall dynamic of the House of Lords. Committees of MPs in parliament have also been quick to note that accountability in a democracy depends not only on elected decision-makers not just taking advice, but their ability to examine and challenge it before making their own decisions.[93]

Responsibility, accepting public trade-offs and judging risk

Elected politicians and governments are obliged to accept the outcomes of policies they have brought forward and executed. In January 2021, the Science and Technology Committee published a report which stated that although the Government was advised by many experts of distinction, and generally followed the advice that was given, the outcome during the first wave of the pandemic is not regarded as having been one of the best in the world.[94] The issue is one

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[92] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/408.htm#_idTextAnchor054
[93] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 6
[94] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://committees.parliament.uk/publications/4165/documents/41300/default/

of responsibility.

When academic researchers proposed a series of initial questions which should be addressed in a Covid-19 public inquiry,[95] one such question included: 'Why did so many people die?' In a 2019 ranking of countries which were best prepared to respond to an epidemic, the UK was placed at number one. But at their time of writing, UK deaths linked to Covid-19 exceeded 150,000, 'and the UK's death rate (pro rata) is among the worst in the world.' By December 2021, however, while the UK had one of the highest rates of covid infection in Europe, its relatively high level of vaccination greatly reduced the number of hospitalisations and deaths.[96]

Taking responsibility for policy also implies taking responsibility for the manner in which lockdown policies were executed. Against the principles of responsibility and proportionality in policy and law, there were regular claims that government relied on fear to guarantee compliance. There were questions raised about the role of 'fear' during the pandemic; not merely that fear had been experienced by many in the general public as a result of high-level restrictions being brought into effect, but that fear had somehow been operationalised to ensure compliance.[97] Not all politicians, scholars and experts at the time were in agreement on that role of fear.

Laura Dodsworth makes an interesting observation from the notes of the Scientific Pandemic Influenza Group on Behaviour (SPI-B) advisory group in the early stages of the pandemic. The group had said in their report *Options for increasing adherence to social distancing measures,*[98] dated 22 March 2020, that

> 'a substantial number of people still do not feel sufficiently personally threatened; it could be that they are reassured by the low death rate in their demographic group, although levels of concern may be rising'.

As a result, they recommended that 'the perceived level of personal threat needs to be increased among those who are complacent, using hard-hitting emotional messaging'. In

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[95] Chris Zebrowski, Daniel Sage and Nina Marie Jorden, 'Five questions that need answering in a COVID public inquiry', https://theconversation.com/five-questions-that-need-answering-in-a-covid-public-inquiry-158560

[96] The Visual and Data Journalism Team, 'Covid map: Coronavirus cases, deaths, vaccinations by country', https://www.bbc.co.uk/news/world-51235105

[97] *A State of Fear: How The UK Government Weaponised Fear During the Covid 19 pandemic* by Laura Dodsworth.

[98] SPI-B, 'Options for increasing adherence to social distancing measures', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887467/25-options-for-increasing-adherence-to-social-distancing-measures-22032020.pdf

essence, Dodsworth suggests that 'the government was advised to frighten the British public to encourage adherence to the emergency lockdown regulations.'[99]

For Dodsworth, members of the SPI-B have expressed their regret about encouraging the use of fear to control people's behaviour during the coronavirus pandemic. Gavin Morgan, a psychologist on the team, admitted it was 'unethical' and 'totalitarian'; another scientist on the team called the use of fear 'dystopian' and 'ethically questionable'; and one member warned that 'We have to be very careful about the authoritarianism that is creeping in'.[100] But if it is found that fear can be operationalised by government to enforce compliance to a given set of regulations, that is damaging not only to the decision-making taking place in governments but also to the form of free society we believe we are participating in. As Steve Baker, the deputy chairman of the Covid Recovery Group (CRG) of MPs, indicated, if it is true that the state decided 'to terrify the public' in order to ensure their compliance with the rules, then that raises 'extremely serious questions about the type of society we want to become.' There was some indication of his own fears that government policy is now 'playing into the roots of totalitarianism'.[101] The policy of enabling fear to generate public compliance is damaging for the consequences it has for undermining personal responsibility. It has meant, as Laura Dodsworth and Dr Ashley Frawley argue, that we have grown afraid of our own judgements in terms of managing the regular decisions in our lives, such as who to hug through to sharing a serving.[102]

The principle of governmental responsibility rests, at least in part, on a realistic appreciation of potential negative impacts of policy, and therefore of managing risk. In an article for the *Financial Times,*[103] Camilla Cavendish poses the question: 'what has happened to our understanding of risk?' following the coronavirus pandemic. At the time, Cavendish noted that coronavirus is now only the ninth most common cause of death in England and Wales. There has been a continuous fall in hospitalisations relating to Covid-19, and data from April 2021 showed deaths were six per cent below the five-year average. She therefore claims 'it is unbelievable that ministers and unelected officials continue to use authoritarian language – and without a murmur from the public.'[104]

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[99] *A State of Fear: How The UK Government Weaponised Fear During the Covid 19 pandemic* by Laura Dodsworth, p. 2.
[100] Gordon Rayner, 'Use of fear to control behaviour in Covid crisis was 'totalitarian', admit scientists', https://www.telegraph.co.uk/news/2021/05/14/scientists-admit-totalitarian-use-fear-control-behaviour-covid/
[101] Gordon Rayner, 'Use of fear to control behaviour in Covid crisis was 'totalitarian', admit scientists', https://www.telegraph.co.uk/news/2021/05/14/scientists-admit-totalitarian-use-fear-control-behaviour-covid/
[102] People's Lockdown Inquirer, 'What Price Lockdown? We Asked People On The Front Line', https://peopleslockdowninquiry.co.uk/wp-content/uploads/2021/06/PLI_online.pdf
[103] Camilla Cavendish, 'We will be lost if we panic at every Covid mutation', https://www.ft.com/content/80894af3-c761-4748-96f4-a75f4fb38b0c
[104] Camilla Cavendish, 'We will be lost if we panic at every Covid mutation', https://www.ft.com/content/80894af3-c761-4748-96f4-a75f4fb38b0c

Rather than the government 'pledging eternal vigilance' to tackling Covid-19, Cavendish argues that democratic societies like the UK need to start taking risks again, 'before we forget how to.'[105] It is pointed out that 'There are many reasons why Brits might be in danger' – all of which have no connection to the pandemic – but research now shows one-third of the public are 'phobic' because of the SPI-B deploying fear in a way which has been described as 'dystopian'. And so, Cavendish suggests government concern was better placed elsewhere, such as 'whether its citizens have become too scared to be the buccaneering entrepreneurs of post-Brexit Britain', because 'We will be lost if we panic every time Covid-19 mutates.'[106]

Responsible government means being clear to the public about trade-offs made both in emergency settings and during more normal periods. The pandemic has highlighted the importance of carrying out robust risk planning and being clear about risk appetite and risk tolerance as the basis for choosing the public trade-offs necessary in emergencies. To evaluate risk transparently, the government should have provided a cost-benefit analysis and impact assessment on all of its major non-pharmaceutical interventions (NPIs) as a very simple tool to illustrate to the public those major balance of harms. This appeared to conform with the Science and Technology Committee's recommendations earlier this year that the Government should publish the advice it has received on the potential indirect Covid-19 impacts – including economic, social and other health impacts – of the interventions it has undertaken, alongside the evidence base for that advice.[107]

Neither should responsible government be confused with risk-aversion at all costs. By hoping to achieve a policy of zero-risk or zero-Covid as a major issue of learning from the pandemic would be to misunderstand the lessons learned. The danger is that when public officials frame debates in terms of risks only, rather than responsibility, we pre-judge any outcome in which state strategies that were risk-averse are no doubt judged to have performed well during the pandemic, when in fact risk-aversion at all costs can often lead to no action or poor outcomes.

While at first it could be seen as reinforcing 'responsibility' to assess how government lacked a template for aspects of its response – for example, following the operation of Exercise Cygnus in 2016 – the attempt to reduce all such risk to template playbooks could be construed as oracle searching. If many of our state institutions, including the NHS, are by nature risk-averse, centrally planned, rule-based public institutions, how we then assess responsibility and risk in the public must be appropriate to how people themselves perceive risk in the circumstances of

[105] Camilla Cavendish, 'We will be lost if we panic at every Covid mutation',
https://www.ft.com/content/80894af3-c761-4748-96f4-a75f4fb38b0c
[106] Camilla Cavendish, 'We will be lost if we panic at every Covid mutation',
https://www.ft.com/content/80894af3-c761-4748-96f4-a75f4fb38b0c
[107] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice',
https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/13603.htm

an emergency and how ministerial decision-making assesses those calculated risks. Moreover, a public test as to what people accept as an appropriate level of risk in their own Covid decision-making, and its impact on their livelihoods and the public purse, should be considered a guiding principle for policy makers.

Making law only where necessary, proportionate, justified and appropriate

In emergencies, governments are likely to be given most of the power they ask for, even if it is disproportionately greater than the crisis requires. Alexandra Runswick suggests this can be due to the 'speed with which emergency legislation is passed, and the pressure on legislatures to put responding to a crisis ahead of scrutiny and due process'.[108] Other research also highlights that in such cases, where 'It is clear that exceptional measures have been necessary to limit the spread of the virus and keep communities safe'[109] – it also vital, in order to protect human rights and the rule of law, that any new powers are proportionate to the scale of the threat, as well as time limited.[110] [111]

The notable drift towards disproportionality should not be allowed to become a permanent feature of our law-making. As said by the House of Lords Select Committee on the Constitution, governments must recognise that, however sudden a crisis might be, exceptional powers are 'lent, not granted, by the legislature to the executive', and such powers should be 'returned as swiftly and completely as possible, avoiding any spill over into permanence'. The decisions to fast-track legislation should only be for 'legitimate and urgent reasons', thereby limiting parliamentary scrutiny to the extent that is absolutely necessary. And any use of urgent procedure must be justified, which the Committee contend has not always been the case during the Covid-19 pandemic.[112]

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[108] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf
[109] Select Committee on the Constitution, 'COVID-19 and the use and scrutiny of emergency powers', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/15/15.pdf
[110] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf
[111] Alex Nice, Raphael Hogarth, Joe Marshall, Catherine Haddon and Alice Lilly, 'Government emergency powers and coronavirus', https://www.instituteforgovernment.org.uk/explainers/emergency-powers
[112] Select Committee on the Constitution, 'COVID-19 and the use and scrutiny of emergency powers', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/15/15.pdf

Emergency UK legislation in response to the coronavirus[113]

As part of the early response to the pandemic, the UK Government introduced the Coronavirus Act 2020 and corresponding regulations under the Public Health (Control of Disease) Act 1984 – in its words, 'to protect as many people as possible'. In combination, these two Acts were viewed as essential by government to mitigate the risk of transmission in communities, protect the NHS and enable it to function effectively, and to 'save lives'.

The Coronavirus Act gained Royal Assent on the 25 March 2020, and was 'an essential enabler' of the Government's approach to combating the pandemic.

The Act was designed to protect public health in various ways, with the ultimate aim of facilitating sufficient preparation for a worst-case scenario.

The Act ensured that the NHS had the capacity to deal with the peak of the virus by allowing the temporary registration of nurses and other healthcare professionals.

It protected critical societal functions and ensured that they were still able to continue, such as providing courts with the ability to use video technology.

The Act ensured economic support packages, such as the Coronavirus Job Retention Scheme and Self-Employed Income Support Scheme, were put in place for people and businesses.

At the core of law-making to manage Covid-19 were questions over proportionality. Following the introduction of the Coronavirus Bill 2020 on 19 March 2020, and ahead of the government's attempt to push the Bill through the House of Commons, parliamentarians and rights groups, led by the civil liberties group Big Brother Watch, published a letter in *The Telegraph* to warn that the Bill's two-year duration was too long, given that it contains 'the most draconian powers ever proposed in peace-time Britain'. Signatories of the letter included the MPs David Davis, Diane Abbott, Joanna Cherry and Sir Ed Davey.[114] That is to suggest that many questions over proportionality were necessarily dependent upon our well-grounded culture of civil liberties.

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[113] Department of Health and Social Care, 'One Year Report on the status on the non-devolved provisions of the Coronavirus Act 2020: March 2021', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978844/coronavirus-act-one-year-status-report-amended.pdf
[114] Big Brother Watch Team, '"Two Years is too Long" for "Draconian" Coronavirus Bill, Warn MPs & Rights Groups', https://bigbrotherwatch.org.uk/2020/03/two-years-is-too-long-for-draconian-coronavirus-bill-warn-mps-rights-groups/

The underlying and currently undemocratic legislative mechanisms which authorise both Covid regulation and Net Zero obligations are breathtakingly similar in nature. When the MP Steve Baker recently wrote on why 'the pandemic revealed that ministerial accountability is all but dead'[115] – since the Health Secretary used a power contained in the 1984 Act, under which he was under no obligation to seek parliamentary approval for up to 28 days – Baker framed the problem of making law through Statutory Instruments in frank terms: if we are continuing to allow the exercise of this power, 'with so little accountability and no serious scrutiny, then we are knowingly and willingly accepting a form of elective dictatorship by ministerial diktat'. He likened the mechanism to our Net Zero obligations – another revolutionary change in our society introduced by SI but which is estimated to run into the trillions of pounds. Disappointingly, that Instrument too, Baker observed, 'was nodded through after barely 90 minutes of debate, let alone a proper vote'.

There is no question that liberties have been eroded during the lockdown and through the manifold social and regionally-tiered restrictions – and the policing of those restrictions – but the question now is whether such restrictions, even at a more minimal level, should ever be used again precisely because of that corrosive effect.

In a report exploring the restrictions which were placed on British people from March 2020 due to the coronavirus pandemic, Christopher Snowdon of the Institute of Economic Affairs (IEA) outlined the objective of ensuring 'that freedom is not permanently diminished as a result of the pandemic response.'[116] Snowdon argues that any benefits which have emerged from the restrictions 'have been far exceeded by the costs to the economy and to civil liberties', and thus none of the emergency legislation should remain once normality resumes. It therefore becomes an obligation upon our media and civil society to put pressure on the government to repeal the Coronavirus Act and all its associated regulations 'as soon as the original objectives have been achieved.'[117] For Snowdon, the Coronavirus Act itself gave 'the government extraordinary new powers to restrict liberty in the name of reducing the transmission of COVID-19' – such as allowing the temporary closing of schools, childcare centres and higher education institutions.[118]

Snowdon examines the Health Protection (Coronavirus, Restrictions) (England) Regulations, introduced the day after the Coronavirus Act was given royal assent. It was 'the legal basis for

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[115] Steve Baker, 'From lockdown to Net Zero, accountability is dead in British politics', https://www.telegraph.co.uk/politics/2021/11/02/lockdown-net-zero-accountability-dead-british-politics/
[116] Christopher Snowdon, 'Liberty After the Lockdown', https://iea.org.uk/wp-content/uploads/2020/05/Liberty-after-the-lockdown.pdf
[117] Christopher Snowdon, 'Liberty After the Lockdown', https://iea.org.uk/wp-content/uploads/2020/05/Liberty-after-the-lockdown.pdf
[118] Christopher Snowdon, 'Liberty After the Lockdown', https://iea.org.uk/wp-content/uploads/2020/05/Liberty-after-the-lockdown.pdf

the "lockdown"' and gave the government the authority to close places of worship, for instance. It was this regulation that included 'the most severe restrictions on the movement of individuals in modern British history' – allowing people to only leave their home if they have a 'reasonable excuse' (such as buying basic necessities') and ordering people to not 'participate in a gathering in a public place of more than two people' unless they are from the same household, except if attending a funeral, for instance.[119]

If we are to think of a position in which we might end those restrictions, Snowdon suggests that some of the restrictions that were introduced in March 2020 were 'arguably excessive even as a response to COVID-19', and so 'If a fraction of the regulations are kept in place after the current crisis has passed it would be a serious blow to civil liberties.' His analysis emphasises that the 'sole justification' which the Prime Minister gave for the lockdown had been when he announced it 'was to prevent NHS services being overwhelmed by COVID-19 patients'; in other words, the restrictions were not formed out of any proposal that they should remain in place until the virus was completely eliminated, nor until a vaccine had become available. For Snowdon, one important reason behind the necessary repeal of the Coronavirus Act was the criminalisation of protests and demonstrations as a result of the ban on public gatherings. 'As soon as the worst of the current crisis is over', Snowdon writes, 'freedom should be fully restored'. Where the laws are no longer justified or necessary, the government must act to revoke or repeal its action.

As a practical point of restoring freedom by repealing law, we must first understand where we went wrong. Writing for *Prospect Magazine*, the human rights barrister Adam Wagner discusses the loss of British people's liberties since the start of the coronavirus pandemic in March 2020. As he notes, despite lockdown laws being 'radically different' to any other law in English history, they were not 'closely considered in parliament.' The Coronavirus Act 2020 had been accelerated through parliament, and the government's decision to impose lockdown was done through secondary legislation.[120]

Adam Wagner identified 'two troubling patterns' which emerged. First, 'last-minute legislating' became a habit. Second, the 'emergency procedure' that potentially avoided any parliamentary scrutiny until at least four weeks later, on Wagner's interpretation, was 'used in every set of regulations that followed, not only to tighten but also to relax restrictions' – with parliament only voting twice 'before new rules came into effect, and in both these cases it was only one day before.' According to Wagner, 'Parliament would have been up in arms' if it was suggested we 'legislate away our most basic liberties by fiat' in 2008, yet today, MPs 'have incrementally

[119] Christopher Snowdon, 'Liberty After the Lockdown', https://iea.org.uk/wp-content/uploads/2020/05/Liberty-after-the-lockdown.pdf
[120] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay

become resigned to their diminished role.' Consequently, 'the government has done breathtaking things—ranging from the almost total ban on physical relationships between consenting adults who don't live together, to the possible abolition of the right to (even socially distanced) protest'.[121]

Even when parliament deliberated on the restrictions, it seemed that liberty, was not considered central. When I came to write this report, we found that between January 2020 and August 2021, according to the traditional *Hansard* search function within all material in the Houses of Parliament, 17,557 contributions were made by all MPs or peers on the subject of 'Covid'.[122] Of the contributions, 11,512 were specific to the Commons and 6,045 were made in the Lords. In the meantime, 523 of the contributions on Covid-related subjects referred to 'freedom', and 129 of the Covid-contributions made some reference to 'liberties'. From this, can we infer that only a maximum of four per cent of all contributions made in parliament were concerned with freedom or liberty?

- Specifically in the House of Commons, if liberties in relation to Covid were only mentioned 83 times by MPs, or freedom mentioned 347 times, then it seems right to infer that approximately four per cent of the 11,512 contributions were focused explicitly on some matter of liberties or freedom.
- In the House of Lords, if liberties in relation to Covid were only mentioned 46 times by peers, or freedom mentioned 176 times, then it seems possible to infer that a slightly lower rate of contributions, but which still approximates to four per cent, were focused explicitly on some matter of liberties or freedom.

When understanding how parliament and government responded to an emergency, the outcome raises deeper questions of why we displaced our strong freedom-based public and legal culture which on an everyday basis generally tends towards preserving civil liberties and human rights, and which would not normally become an afterthought simply because of the instability and fear that arise with emergencies.[123]

As pointed out by Alexandra Runswick, how 'a state responds to emergencies inevitably highlights the strengths and weaknesses of its system of governance.'[124] It seems sure that the

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[121] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay
[122] This measure is very approximate. For example, those who discuss Covid in other terms may not have been included; those who discussed and were speaking in favour of protecting freedom of liberty may not explicitly refer to those 'liberties' explicitly. Hansard search: https://hansard.parliament.uk/search
[123] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf
[124] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf

government has largely ignored lessons learned from previous emergency legislation. How the state responds to a pandemic is important, the researcher suggests, not only because of the pandemic itself, but because 'we are also laying the foundations for what society looks like post-pandemic.'[125] We are relying on delegated powers in legislation that we cannot possibly scrutinise effectively.

To ensure that civil liberties don't become casualties of the instability of emergencies, proportionality and time limits are essential. According to this view, in emergencies, governments can often be more likely to be given most of the power they ask for, irrespective of whether it is more than what the crisis requires. Therefore, the rule of law must be guaranteed so that any new powers are proportionate and time limited. The passage of the Coronavirus Act and the health regulations saw the executive being given wide-ranging powers, with such little scrutiny and oversight. For Runswick, it undermined the tenets of our democratic society. That same Act gave police 'extensive powers' which were concerning and made worse by the lack of clarity about those new powers. The minimising of parliamentary oversight and some of the constraints on emergency powers was 'a deliberate and significant decision', in Runswick's view.

Robust scrutiny for all public-serving bodies

An urgent constitutional reform is required to scrutinse the elaborate networks that resulted in the advisory group, SAGE, which lay behind so many of the restrictions over the past 21 months. The reasoning behind this reform is that – although such advice is constructive in a public health emergency – its constitutional role was misplaced and elevated above all reasonable principles of transparency, openness, public accountability and regular democratic decision-making.

What scrutiny is ever done of such groups and bodies? According to the guidelines for operating SAGE, the membership of SAGE does not duplicate other advisory groups, and it should include 'representatives from a wide range of relevant disciplines' and avoid over-reliance upon specific experts. Additionally, IfG research highlights the guidelines indicating 'membership of existing scientific advisory groups should form the "starting point" to speed up

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[125] Alexandra Runswick, 'Power and the pandemic: civil liberties in the age of coronavirus', https://renewal.org.uk/wp-content/uploads/2020/10/renewal28.2_03runswick.pdf

the activation process and ensure continuity of advice.'[126] Whether these principles are welcome, or simply encourage a deeper insular groupthink process, ought to be reviewed.

The absence of transparency in public health emergencies is hardly a novel idea. Before the coronavirus pandemic, SAGE had been activated on at least 10 occasions – first being used in 2009 to provide advice on the swine flu outbreak. Prior to this, the Institute for Government records that 'scientific expertise was provided to ministers either directly by specialist advisory groups, or through the government chief scientific advisor and the chief medical officer.'[127] During past crises when SAGE has been activated, both the minutes of SAGE meetings and the attendee lists have not been published until the crisis has concluded. But if the emergency involved issues of national security, such as the Salisbury chemical attack in 2018, the minutes of meetings are classified. So, when is transparency appropriate, if at all?

It seemed neither clear to government or to SAGE as to why the public or media wanted to scrutinise the papers that lay behind their decision-making. For the coronavirus pandemic, the guidelines for managing SAGE advised that the most appropriate time for publishing minutes would be after the emergency is over.[128] However, in May 2020, following a high level of public interest in the scientific advice being provided to the government, minutes of meetings and research papers relating to the coronavirus pandemic began to be released. Further, the government also published a list of SAGE expert attendees. Nevertheless, despite the government's publication scheme stating all minutes and papers would be published within one month of the meeting, this target was not met.

The required scrutiny applied to SAGE as it did to a number of notionally independent expert groups that co-existed with that group:

- The Scientific Pandemic Influenza group on Modelling (SPI-M);
- New and Emerging Respiratory Virus Threats Advisory Group (NERVTAG);
- Advisory Committee on Dangerous Pathogens (ACDP);
- Independent Scientific Pandemic Influenza group on Behaviours (SPI-B); and
- Joint Committee on Vaccination and Immunisation (JCVI).

In the absence of robust scrutiny, fundamental questions were not asked of social restrictions, or entire test and trace policies. We must learn not to prioritise collecting 'data for data's sake' over properly scrutinised workable and realistic policy. The supremacy of data collection during

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[126] Alex Nice, 'Scientific Advisory Group on Emergencies (SAGE)', https://www.instituteforgovernment.org.uk/explainers/sage
[127] Alex Nice, 'Scientific Advisory Group on Emergencies (SAGE)', https://www.instituteforgovernment.org.uk/explainers/sage
[128] Alex Nice, 'Scientific Advisory Group on Emergencies (SAGE)', https://www.instituteforgovernment.org.uk/explainers/sage

the pandemic appeared myopic when we consider that – in the absence of scrutiny over realistic policy, delivery mechanisms or infrastructure – the singular pursuit of seeking to collect data for its own purposes has yielded some poor outcomes. This included a tracing system which seemed unable to break chains of Covid-19 transmission or enable people to return towards a more normal way of life,[129] while engendering great expense for the taxpayer. The priority accorded to collecting data by Departments and the scientific advisers associated with each of the Covid-related committees often appears to take precedence over any political decision on overall workability or effectiveness of policy. In its report in March 2021, the Public Accounts Committee found that there was still no clear evidence of the overall effectiveness of NHS Test and Trace (NHST&T).[130] Neither was it clear whether the system's contribution to reducing infection levels – as opposed to the other measures introduced to tackle the pandemic – could justify its 'unimaginable' costs.

The Committee reported that in March this year the NHST&T was set up with a budget of £22 billion – about the annual budget of the Department for Transport. Since then, it had been allocated £15 billion more: totalling £37 billion over two years.[131] As the Committee found, health authorities justified the scale of investment, in part, on the basis that an effective test and trace system would help avoid a second national lockdown – but since its creation we then had two more lockdowns. The Chair described (at that time) how the project 'cannot point to a measurable difference to the progress of the pandemic'. The Committee later reported in October 2021 that NHST&T's continued over-reliance on consultants is likely to cost taxpayers hundreds of millions of pounds, while by the end of May 2021, the system had sent out 691 million lateral flow tests, but results had been registered for only 96 million (14 per cent) of them.[132] In other words, the ongoing commitment to data and evidence often does not tell you whether an entire policy framework was correct.

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[129] See the Public Accounts Committee in October 2021, https://committees.parliament.uk/committee/127/public-accounts-committee/news/158262/muddled-overstated-eyewateringly-expensive-pac-damning-on-test-trace-that-has-failed-on-main-objectives/
[130] Public Accounts Committee, '"Unimaginable" cost of Test & Trace failed to deliver central promise of averting another lockdown', https://committees.parliament.uk/committee/127/public-accounts-committee/news/150988/unimaginable-cost-of-test-trace-failed-to-deliver-central-promise-of-averting-another-lockdown/
[131] Public Accounts Committee, '"Unimaginable" cost of Test & Trace failed to deliver central promise of averting another lockdown', https://committees.parliament.uk/committee/127/public-accounts-committee/news/150988/unimaginable-cost-of-test-trace-failed-to-deliver-central-promise-of-averting-another-lockdown/
[132] House of Commons Committee of Public Accounts, 'Test and Trace update', https://committees.parliament.uk/publications/7651/documents/79945/default/

Judging judges: Who can doubt the arm's-length bodies?

What does all this mean for a constitutional separation of powers and the unscrutinised role of ALBs? If, in the post-Covid context, we are to reclassify and reorganise any of our public health bodies – to better our lines of accountability and responsibility – then that project rests chiefly with the Cabinet Office. It is particularly notable that the Public Accounts Committee previously reported in 2016 that the Cabinet Office must use its position at the centre of Government to ensure departments improve the way they manage business through ALBs.[133] In its September 2021 report *Government's delivery through arm's-length bodies*, the Public Accounts Committee made a further series of recommendations for the Cabinet Office. They found the Cabinet Office had made slow progress on plans for arm's-length bodies reform since 2016; that they did not provide Departments with enough support in certain aspects of ALBs management; and that their public appointments process did not give confidence that it was efficient, transparent or fair.[134]

We must completely review again the way in which government decides when to use ALBs to deliver its objectives. There is an urgency to re-evaluating how government directs policy and how parliament enacts law through those bodies in a way which is accountable to the electorate. While the existing Cabinet Office guiding principle underlying the framework for the classification of an ALB should be determined by the degree of freedom that body needs from ministerial control to perform its functions,[135] some urgent rebalancing is required in order to ensure ALBs can (if at all) provide genuine public accountability alongside acting on, and achieving, their set objectives.

Similar to our 47-year experiment with European political, judicial and social integration, the growth of administrative power continues to raise serious doubts about whether we can work within our regular constitutional paradigm of a separation of powers, including the supreme role of parliament – as accountable to the public – in our governing arrangements. The Brexit process itself constituted a recent episode in British history in which we re-imagined and debated where democratic and accountable decision-making should reside within our political system. The governmental response to the pandemic introduced to the electorate some of the

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[133] Public Accounts Committee, 'Cabinet Office key to strengthening oversight of arm's-length bodies', https://committees.parliament.uk/committee/127/public-accounts-committee/news/98443/cabinet-office-key-to-strengthening-oversight-of-armslength-bodies/
[134] House of Commons Committee of Public Accounts, 'Government's delivery through arm's-length bodies', https://committees.parliament.uk/publications/7431/documents/77735/default/
[135] Cabinet Office, 'Classification Of Public Bodies: Guidance For Departments', Public Bodies Handbook – Part 1, 27 April 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/519571/Classification-of-Public_Bodies-Guidance-for-Departments.pdf

UK's most restrictive peacetime law and policy, combined with significant increases in public spending, but in which public and parliamentary accountability for those decisions has been eroded so that little (if any) control has genuinely been exerted over the technocratic bodies of the executive.

It is not entirely clear that the historic model of arm's-length separation between the government and regulators has had the desired impact. The regulatory framework that many once espoused would enhance transparency and accountability has delivered an absence of transparency and a deliberate avoidance of accountability to the public and parliament, and raised questions as to who really regulates the advice-providers and the regulators.

The creation of public-less policy is comparable with the absence of scrutiny and accountability in the devising of net zero policies through the partly remote, arm's-length and independent powers enjoyed by the Climate Change Committee – established under the Climate Change Act 2008. The absence of scrutiny over its policy making is reflected in the currently unworkable and eye-wateringly expensive climate change policies advocated by government. Ministers' repeated submission to the advice coming from specialist bodies, including unclassified expert committees, has masked the inappropriate passing of the ownership of trade-offs in the balance of harms that only political decision-making could provide. Democratic and parliamentary accountability of executive-led agencies and public health advisory bodies should therefore be a leading consideration, not an inconvenience to the executive.

When presented with the rise of opaque and secretive elaborate networks in which ministers at the apex of the system are being replaced by complex and overlapping arrangements – some 295 ALBs close to government, others operating at some distance from ministerial control – our central question should be whether they can deliver their assigned policy brief, as well as whether we can allow the elaborate service networks and independent public bodies to operate while insulated from electorally-authorised sources of authority.

The danger is that unaccountable, technocratic bodies are emerging to constitute an unwieldy executive power which can restrict, rather than bolster, public and parliamentary accountability. Public bodies which do not generally exercise 'governmental power' can have a major impact on policy decision-making. This has the habit of conflicting powers in the UK context since major political decisions should ordinarily be taken by politicians as accountable representatives, not by judges, technocrats or public bodies which can either be insulated or far removed from ministerial control. MPs can be removed at the ballot box; government servants rarely face dismissal of any kind.

2. Scientocracy: handing governing powers to 'the science'

If we are to talk of ministers' acquiescence to 'the science', just who are those advisory groups providing 'the science'? What power did they have? Much of the attention necessarily focuses on SAGE. What appeared to many to be a near-total dependence on that one committee by minsters, produced a powerful network so much greater than 'an advisory group'. The subsequent structures put in place between minsters, SAGE and the Cabinet Office produced a set of policies that normally avoided many of our democratic standards and conventions, and should be reformed without delay. All further regulations, combined with the accumulated advice from SAGE, NERVTAG and SPI Groups must be submitted to parliament for debate and, where necessary, to votes. A more minor reform should be that we change the opaque SAGE into an advisory non-departmental public body (NDPB) – much like the Advisory Council on the Misuse of Drugs (ACMD) – to make it accountable, while allowing lay members to serve on its board.

How we approach public bodies in the health arena after Covid-19 is essential work, not only because of the construction of new bodies and deconstruction of Public Health England (PHE), but because of their 'deferential' challenge. It is almost universally acknowledged that the most significant policy reversal came on 16 March 2020 as the Prime Minister reacted to Neil Ferguson's Imperial College team modelling study (discussed below). The notable compliance with the science, which is by its very nature, partial, incomplete and often subject to change, requires a policy of science education for minsters and the wider body of MPs and peers. Not only do the mechanisms for 'groupthink' need to be broken up, but the minister-SAGE network is in need of education on the role of modelling, why modelling and its forecasts are not science, yet how to appreciate and incorporate modelling techniques into policy, and what then to do when the models don't match realities.

Research by Ioannidis, Cripps, and Tanner (2020) argues that epidemic forecasting has a 'dubious track-record', with its failures growing more prominent with Covid-19 decision-making.[136] Among the failures, we can look to:

> 'Poor data input, wrong modeling assumptions, high sensitivity of estimates, lack of incorporation of epidemiological features, poor past evidence on effects of available interventions, lack of transparency, errors, lack of determinacy, consideration of only

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[136] John P.A. Ioannidis, Sally Cripps and Martin A. Tanner, 'Forecasting for COVID-19 has failed', https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7447267/

one or a few dimensions of the problem at hand, lack of expertise in crucial disciplines, groupthink and bandwagon effects, and selective reporting'.[137]

Although the researchers felt epidemic forecasting was unlikely to be abandoned, and some underlying problems were fixable, such as considering multiple dimensions of impact, they are careful to conclude that when such major decisions as lockdowns are based on forecasts, then the harms on health, the economy, and wider society, and the 'asymmetry of risks', should be approached in a holistic fashion, considering the broader totality of the evidence.[138]

In the face of radical uncertainty, the use and abuse of models have often demonstrated common deficiencies. In a broader context beyond Covid-19 considerations, John Kay and Mervyn King suggest all models display at least some of the following weaknesses:

1. The modelling exercise applies a common template to disparate situations.
2. Modelling exercises rely on filling in gaps in knowledge by inventing numbers (some prescribed numbers, some left to the discretion of modellers).
3. Exercises necessarily assume a stationarity of the underlying process, and often without justification.
4. In the absence of stationarity, modelling exercises cannot account for uncertainty, and where there is no basis for the construction of probability distributions, confidence intervals or statistical inference.
5. Given the costs and complexity of models, they often prevent meaningful public consultation and debate.[139]

The major assumption behind our modelling expectations, as Kay and King set out, is that they all start out by considering how you might 'make a decision if you had complete and perfect knowledge of the world, now and in the future'. But very little of that relevant data can be known of a disease which poses challenges in an environment of radical uncertainty. Some mistakes have been made in the way worst-case outputs from models have been used, as Rob Lyons has argued, so that conclusions from models have been treated as gospel and expressed in alarmist ways to scare people into accepting the bulk of restrictions.[140] Moving forward, a more responsible approach would be for advisers and ministers in government to place far less confidence in any one specific model, or even group of models produced by teams within SAGE or NERVTAG, but to enable different teams of experts, working independently, even

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[137] John P.A. Ioannidis, Sally Cripps and Martin A. Tanner, 'Forecasting for COVID-19 has failed', https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7447267/
[138] John P.A. Ioannidis, Sally Cripps and Martin A. Tanner, 'Forecasting for COVID-19 has failed', https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7447267/
[139] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future.
[140] People's Lockdown Inquirer, 'What Price Lockdown? We Asked People On The Front Line', https://peopleslockdowninquiry.co.uk/wp-content/uploads/2021/06/PLI_online.pdf

competitively, to come up with their own virus-testing hypotheses which could be used to challenge other rival experimental studies.

SAGE and the transfer of power

One feature of the constitutional complaint of emergency Covid policy and law is that, during the pandemic, there was a radical transfer of power from democratic arrangements of decision-making to ALBs or advisory committees – such as SAGE and NERVTAG – who reigned supreme within elaborate networks. All of this was constructed without a great deal of internal scrutiny and almost no accountability to the public.

Many will have observed that in the early stages of the pandemic, the Prime Minister had a relaxed approach to restrictive measures, deferring almost solely to the advice of those scientists. However, this approach was prior to the policy reversal which came on 16 March 2020 with the publication of the report by Neil Ferguson's Imperial College team. The Imperial data was presented in 'Report 9'.

The early modelling study, designed by a team led by Neil Ferguson, a prominent member of SAGE and a professor of mathematical biology at Imperial College London, assembled data which predicted that with no mitigating measures at all, the outbreak could have caused more than half a million deaths in the UK. It perhaps justifiably startled government ministers because, even with their more moderate plans for home isolation of suspect cases, such a plan could also have resulted in a significant 250,000 people dying 'and health systems… being overwhelmed many times over'.[141]

Tom Jefferson and Carl Heneghan of the University of Oxford's Centre for Evidence-Based Medicine have been cautious to point out that all models which are based on scientific principles have substantial uncertainty as to their starting point and are not compatible with 'oracle-like statements of certainty'. While modern computing methods might have made it easy to recalibrate and adjust previous models with small bits of data, epidemics are nonlinear and chaotic, and models are only as good as the data they are based on, so the limitations of them should be clearly described.[142]

The Imperial study went on to recommend alternative measures which the government then followed. The lockdown essentially derived from those warnings. One other prominent

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[141] Imperial College COVID-19 Response Team, 'Report 9: Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand', https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf
[142] Tom Jefferson and Carl Heneghan, 'Modelling the models', https://www.cebm.net/covid-19/modelling-the-models/

Edinburgh University analysis of Imperial's well-known 'Report 9' modelling, published in October 2020, even went on to confirm the group's key projections from March that year.[143] However, rather than the UK having created an independent external, advisory scientific committee upon which ministers could draw upon during an emergency, ministers have been served during the pandemic by a group with an effective monopoly of advice over policy.

The narrow, exclusive membership of SAGE and of earlier NERVTAG meetings illustrate the limited nature of their membership, with preferential treatment given to them for the provision of their advice. It is of course well-justified that government respects external advice. It is another thing, however, to unquestionably turn narrow advice into policy. Having passed hard political choices to 'the science', the ambiguity masks the setting aside of decisions on the balance of harms that only political decision-making could answer.

Much of the attention has focused on SAGE – that is the body of scientists who gave advice to government on the management of the Covid-19 virus. In December 2020, the Institute for Government published the report *Science advice in a crisis* – in which researchers asserted that the Covid-19 pandemic 'exposed flaws in how ministers understand and use science advice to inform their decisions.'[144] The authors of the report contend that during the beginning of the pandemic, 'ministers put too much weight on SAGE – relying on it to fill the gap in government strategy and decision making that it was not its role to fill'. They suggest this led the government to delay the first lockdown as rather than using scientific evidence alongside other inputs to make their own judgements, the government instead 'waited until the scientific evidence was overwhelming' before locking down. But it should also be added, with ministers putting too much weight on SAGE advice, it could perceptibly have negative impacts in both senses – it could lead to unnecessarily bold restriction-enthusiastic policies (as most often appeared to be the case) but, on some occasions, action-avoidance strategies.

Irrespective of the scale of restrictions imposed, many now acknowledge the groupthink-style consensus between scientific advisers and government. For example, one select committee report found that during the early stages of the Covid pandemic, when the UK may have been better served by a smarter policy in its use of non-pharmaceutical interventions – to stop the spread rather than moderating the speed of infection through the population up until 23 March 2020 – the government's decisions on restrictions were taken essentially 'because of the official scientific advice the Government received, not in spite of it'.[145] Government policy 'did not

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[143] Andrew Scheuber and Dr Sabine L. van Elsland, 'BMJ study confirms Imperial COVID-19 projections', https://www.imperial.ac.uk/news/206213/bmj-study-confirms-imperial-covid-19-projections/
[144] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf
[145] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/

deviate from the scientific advice it received in any material respect', the report stated, which reflected that 'a consensus between official scientific advisers and the Government indicates a degree of groupthink that was present at the time which meant we were not as open to approaches being taken elsewhere'.[146] Alternatively, we also know there were many occasions where the second and third lockdowns were extended for months without adequate justifications, again resulting from a cosiness, or groupthink, within regulatory forms of governance inhabited by elaborate adviser-led networks. The purpose of SAGE should be as a supporting group for identifying scientists that ought to be consulted and ensuring valid opinions are represented. SAGE should not be asked to find consensus.[147]

The structures put in place between minsters, SAGE and the Cabinet Office produced a set of policies which obviated any need for democratic standards and must be urgently reformed. It produces a narrow and unscrutinised form of policy which should no longer be produced. According to Fraser Nelson, 'The Cabinet Office, which ought to have supplied the rigour, instead served to amplify spin.'[148] He said that some of the internal documents 'read like they're trying to terrify the Prime Minister into locking down', and so Boris Johnson made decisions based 'on data which was often flat-out wrong'. Additionally, Nelson notes that SAGE began to act 'like lobbyists for lockdown' – with some of its members publicly making the case for more stringent action, and any who objected were threatened with being fired. It all pointed to a glaring failure in our system: the attempted stifling of debate.[149]

Importantly, however, Nelson points out this flawed system was still in place by May 2021. We had the SAGE committee, operating in half-secrecy, calling the shots and, where necessary, bringing forward models with a bias towards delaying the easing of lockdown.[150] Therefore, Nelson argues that an inquiry is needed 'into how Sage forced Britain into lockdown'.[151]

According to some government sources, the role of SAGE is likely to be reviewed once the coronavirus pandemic is over. Even members of SAGE have themselves now expressed concern that the group holds too much sway over ministerial thinking and prevents alternative views

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[146] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/
[147] See Tim Ambler, 'Streamlining the Quango State', https://static1.squarespace.com/static/56eddde762cd9413e151ac92/t/5f7ed36a04f8d44f451e64f6/16021471818 73/Streamlining+the+Quango+State+-+Tim+Ambler+-+Final.pdf
[148] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/
[149] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/
[150] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/
[151] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/

being given equal weight. Those who worked inside government conceded that they were 'bowing' to SAGE 'too often'.[152] Subsequently, it was revealed another inquiry is expected to take place in the future to scrutinise SAGE and consider whether such a body should hold that degree of power.

The British position is less exceptional than many have assumed. One key contribution by a legal expert to the debate in Australia questioned whether governing in a pandemic had forced profound constitutional changes to the extent that they were moving from parliamentary sovereignty to an autocratic technocracy. In Eric Windholz's paper focusing on the Australian response to the Covid-19 pandemic, he notes 'the changes wrought by the COVID-19 pandemic have been profound'.[153] In many respects, Australia's response to the pandemic has followed a similar pathway to that of other countries, such as the marginalisation of the role of parliaments. However, the Covid response 'has seen the medical-scientific expert metamorphose from decision making input into decision-maker'. Major legislative and executive decision-making authority has been delegated to these experts. The outcome has meant that severe restrictions have been placed on an individual's freedom of movement, freedom of association and to earn a livelihood, based on one narrow band of advice. The long-term implication for both countries is that we seem to be accepting governance arrangements, which, in this case, represent a modification of some of the key constitutional underpinnings of our system of government.

Windholz put this in the context of the rise of autocratic technocracy. 'Autocratic' refers to a government in which political power is concentrated in the hands of a single person (or group of people) and whose decisions are not subject to external control (legal or popular). 'Technocracy' refers to a government that is controlled or heavily influenced by experts in science or technology. In a description which mirrors our own challenges, Australia's emergency governance arrangements, for Windholz, exhibit strong elements of both of these aspects. Those restrictions were being imposed and were absent of the many checks, balances and accountability mechanisms that we would normally expect to provide oversight in the exercise of executive power. This has often meant civil society, the media and the public generally accepting, in Windholz's words, 'the credibility of the government's response and the necessity of its coercive, liberty restricting directions'.[154]

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[152] Gordon Rayner, 'Role of Sage to be reviewed over fears scientists hold too much power', https://www.telegraph.co.uk/news/2021/03/15/role-sage-reviewed-fears-scientists-hold-much-power/

[153] Eric L Windholz, 'Governing in a pandemic: from parliamentary sovereignty to autocratic technocracy', https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1796047?needAccess=true

[154] Eric L Windholz, 'Governing in a pandemic: from parliamentary sovereignty to autocratic technocracy', https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1796047?needAccess=true

Much of our Covid decision-making processes and their elevation of unaccountable and untransparent actors inhibits some of the essential features of parliamentary democracy. Parliamentary democracy is a form of democracy that operates through a popularly elected deliberative assembly, establishing a link between government and the governed. It is a kind of democracy which is a system of representative and responsible government. It endeavours to balance popular participation on the one hand, with elite rule on the other. In this process, government ordinarily becomes accountable not directly to the people in general, but to their elected representatives.[155]

As the only popularly elected institution in UK central government, parliament forms the centre of the democratic process. Parliament is able to ensure representative government because its dominant chamber, the House of Commons, is elected. MPs are therefore tasked to represent their constituencies; and the House of Commons, as a whole, serves as the debating chamber of the nation. By debate in parliament, the institution maintains a form of deliberative democracy. It is a kind of democracy in which the public interest is decided through debate, discussion and argument amongst elected representatives and citizens. To forego the process of debate, discussion and argument is to discredit the democracy that so many of us claim to have.[156]

An arm's-length position: the trouble with democracy-from-a-distance

Citizens are well accommodated to a British governing 'core executive' making decisions at the highest level, consisting of the Prime Minister's Office, the Cabinet and Cabinet Office, through to high-level officials within departments. We are also adjusted to policy initiatives coming from a defined ecosystem of actors. Policy can derive from the Prime Minister, Cabinet, their advisers, parliament, political parties, inquiries, leading economic voices, select committees, the Opposition[157] and so forth. On the outer periphery are single-issue and activist groups, scientific advisors, academics and, possibly, party groupings (such as the ERG). While it might be understood that policies can start at both the core level and on the periphery of our political arena, it is also acknowledged that the primary and most fundamental proposals become more important as they move towards the central core.

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[155] Jim McConalogue, 'Rebalancing the British Constitution: The future for human rights law', https://www.civitas.org.uk/content/files/2438-A-Rebalancing-the-Brit-Const-WEB.pdf
[156] Jim McConalogue, 'Rebalancing the British Constitution: The future for human rights law', https://www.civitas.org.uk/content/files/2438-A-Rebalancing-the-Brit-Const-WEB.pdf
[157] See Bill Jones, 'The policy-making process' (Chapter 23), in: Bill Jones, Philip Norton, Oliver Daddow (Eds.) *Politics UK* (Ninth Edition), London: Routledge. p. 548.

Whatever way we look at a specific policy, the core executive is responsible for formulating policy and the directions it gives to all others in the government machine to develop and define the policy.[158] But our expectation was flipped on the head during the pandemic, with policy often initiated in the scientific advisory group networks from advisors who would, in normal times, be considered to operate on the periphery. Neither was there any structure or agreement in place to enable a half-classified, half-autonomous body of advisors to be incorporated into core executive policy – without scrutiny of their evidence or plans or operating in the absence of parliamentary amendment. Epidemiologists, including experts in mathematical biology with little qualification outside their narrow sphere of industry, were called upon to judge on universal restrictions, laws and policies across society from within the core executive, despite an absence of electoral legitimacy or sanctioned set of rules to enable them to adopt that power.

The pandemic has thus raised questions as to how ALBs need to be reformed from occupying very narrow remits and designed to combine the different strands of health and economic analysis into a feasible strategy. The Treasury Committee made clear in their February 2021 report that economists should work together with epidemiologists and health experts to make decisions on social restrictions, and that the output of this work should be made public.[159] It is not clear if this ever happened. In this chapter, I set out a modest response – that government has a parallel social and economic advisory group for emergencies, a SEAGE. The Treasury Committee rightly recommended a more multi-disciplinary approach to examine the health and economic costs of social restrictions – and urged the Government to put more information in the public domain as to how economic and health factors have been taken into consideration regarding Government decisions on social restrictions.[160] Again, the recommendation was of vital importance, but little evidence has been produced to suggest any reform in this area.

There is a strong tendency towards 'groupthink' in ALBs, namely, the adoption of a singular view or policy not wholly based on objective interpretation of the economic, social and health realities. The consensus of the 'in group' can result in the need to approach the views of anyone who questions the consensus as lacking merit or team spirit. It can have disturbing and poor outcomes. Putting aside personalities, the striking feature of such thinking is that it occurs when a group of individuals within an institution have formed a consensus without genuine critical reasoning or evaluation of the consequences or alternatives, including ignoring other relevant information. While not many would doubt the efforts of experts and members to

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[158] See Bill Jones, 'The policy-making process' (Chapter 23), p. 552.
[159] Treasury Committee, 'Economic impact of coronavirus: gaps in support and economic analysis', https://committees.parliament.uk/publications/4703/documents/47210/default/
[160] Treasury Committee, 'Economic impact of coronavirus: gaps in support and economic analysis', https://committees.parliament.uk/publications/4703/documents/47210/default/

strive for unanimity on a policy during a pandemic, they would question why this impulse might then automatically override any motivation to realistically appraise alternative evidence and courses of action. Important but contradictory health, economic or social data often appears to have been set aside.

In setting up the various committees and public bodies during the pandemic, which in ordinary times would have fallen under the functions of ALBs, it is ultimately a question for the Cabinet Office as to why it should create an ALB that combines the different strands of analysis together into a feasible strategy. It remains the work of the Cabinet Office to ensure that the set of Covid-19 cabinet committees is provided with an institutional framework that integrates health, social, economic and other advice in coordinating the response to the pandemic.[161] There has been an avoidance by institutions of taking responsibility to integrate or synthesise the different strands of analysis together to create a feasible strategy and form an overall judgement. The lines of responsibility and accountability must surely be clarified by the Cabinet Office after the pandemic.

In considering the future design of ALBs, it is essential to clarify the responsibilities for decision-making and accountability because the Covid-19 government decision-making process, to many citizens, appears inadequately scrutinised and can become subject to a preoccupation with insulated expertise within 'arm's-length' government bodies. The role of uncategorised, free-floating committees, part-governmental in their unclarified hierarchy, part-NDPB (non-departmental public body) in its actions, took on a mode of functioning which fell well outside the ordinary avenues of accountability to parliament, and is therefore of concern to the public. Major political decisions which were multi-faceted in nature – including on the economic and social costs associated with pandemic measures – should have been made with a far greater parliamentary and public role in decision-making and debates, not left to a team of epidemiologists.

The terms of reference (TOR) should have always been properly devised and understood. The current SAGE guidance specifies that aims and objectives of any SAGE should be clearly communicated in the TOR for any advisory group, and these should be agreed by its members.[162] It is said the TOR for any SAGE (or SAGE sub-committee) should include an aim to 'support' decision-making during emergencies – that is, to 'support UK cross-government

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[161] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf

[162] Cabinet Office, 'Enhanced SAGE Guidance: A strategic framework for the Scientific Advisory Group for Emergencies (SAGE)', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/80087/sage-guidance.pdf

strategic decision making'. But that does not seem to be what SAGE amounted to. It more greatly shaped government policy than its 'supporting' role suggests.

Advisory groups which inform government decision-making should not be granted 'a representational monopoly' within those arm's-length networks. In designing ALBs, some caution needs to be shown as to why scientific groups in elaborate adviser-led networks in the pandemic were given such broad powers beyond providing advice and scrutiny. Ministers emphasised their acceptance to following the scientific advice coming from SAGE, NERVTAG and the Scientific Pandemic Influenza Group on Modelling (SPI-M). Early modelling projection studies were used via those ad hoc groups to persuade the government to overhaul its approach to Covid-19 and then impose tougher lockdown measures to contain the virus. Those concerns were put before the various non-Covid impacts on a society living with those measures. The increasing concern for the insulation of expertise from public accountability will only grow worse now that SAGE's original functions have been partially integrated into a complex conglomeration of executive agencies formed around the Joint Biosecurity Centre (JBC) and UK Health Security Agency (UKHSA).

A central concern from the very beginning of the pandemic had often been the lack of transparency of the membership of bodies and of the scientific advice being provided by those arm's-length groupings to government ministers. The Department of Health and Social Care (DHSC) was faced with immense public concern resulting from the delays in publishing SAGE information and the absence of minutes from SAGE meetings. This was also followed by the absence of accountability in subsequent information provided in the setting up and the ongoing proceedings of another ALB, the new Joint Biosecurity Centre (JBC).

Parliament is there to hold the government and public bodies to account, and to represent the people. As a matter of principle, parliament holds the executive to account by challenging its policies and actions, and enables ministers and senior officials to be held accountable publicly for their decisions. In the House, why can't each select committee not assign a sub-select committee to scrutinise and more systematically hold to account the membership lists, activities and purposes of each public body? There may be critics who suggest it may generate some additional burdens or cost to parliament, but the entire challenge to parliament results from an advanced administrative bureaucracy vastly outsizing a comparatively minimalist system of parliamentary and public accountability.

One viable solution may lie with the House of Lords' EU Committee structure, which is made up of six committees: a 19-strong Select Committee, appointed by the House of Lords, and five sub-committees appointed by the Select Committee. The five sub-committees (EU Environment Sub-Committee, EU Goods Sub-Committee, International Agreements Sub-Committee, EU Security and Justice Sub-Committee and the EU Services Sub-Committee) conduct inquiries

looking at major issues of the day and scrutinise EU proposals in detail in specific areas. In a similar fashion, why can't all the various ALBs report regularly, directly and more systematically into a sub-Select Committee within the House of Commons committee system to improve parliamentary accountability? It would add a new level of rigorous scrutiny over our public bodies.

In that context, the UK Health Security Agency (UKHSA) has now been set up as an executive agency, sponsored by the Department of Health and Social Care (DHSC). The JBC is part of the UKHSA and is an integral part of the NHST&T service within the DHSC. Working in partnership with Public Health England (PHE), it is viewed as an important element of an evolving and strengthening health protection ecosystem in the UK. The JBC is currently accountable to Parliament through the Secretary of State for Health and Social Care and the Minister for Care, but why not make its leading officials directly accountable to MPs in a more formal way? If, in the context of executive agencies, the department sets policy, and only the minister is accountable to Parliament, why should that formula remain? Ministers need to be given the tools to support their decisions, so why not involve parliament so that the lead officials could be questioned or scrutinised by MPs within a select sub-committee to get more comprehensive answers to the major questions (both in an emergency crisis and non-emergency settings)?

If the decision to replace PHE as an executive agency was based on early decisions in March 2020 to stop mass testing and tracing, then this is obviously a matter for wider policy discussion on how we construct our health institutions and make them accountable. However, in understanding the broader Westminster handling of the pandemic along with PHE, reports have identified both the 'impulse to centralise' and a 'wariness of engaging with industry'.[163] We may also be faced with a situation in which PHE did not necessarily fall by the wayside because of poor performance, but more fundamentally because of blurred lines of accountability. This can mean that although PHE is tasked with prioritising infectious diseases, credible analysis suggests that it could arguably spread itself too thinly over a broad range of issues, often retreating into a comfort zone of discussing lifestyle issues.[164]

What do we do with a system of governance – originating under the Thatcher administration and then developed strongly under previous Labour Governments – in which ALBs have come to enjoy a supreme sense of authority but have been enabled to shun the accountability and legitimacy that underpinned them? During that early period, in 2004, the Constitution

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[163] Sarah Neville, 'Covid-19 unmasks weaknesses of English public health agency', https://www.ft.com/content/e149101a-1c93-4b0a-bc12-14ca8bf11b0e

[164] Christopher Snowdon, 'You Had One Job: The shortcomings of Public Health England and the World Health Organization during the Covid-19 pandemic', IEA Briefing 14: September 2020, https://iea.org.uk/publications/you-had-one-job-the-shortcomings-of-public-health-england-and-the-world-health-organization-during-the-covid-19-pandemic/

Committee published a report, *The Regulatory State: Ensuring its Accountability,*[165] showing some caution as to how the existence of regulators raised fundamental questions of accountability. It understood that regulators are appointed by ministers in order to achieve certain policy objectives. Ministers are accountable to Parliament, individually and collectively. Regulators are appointed in order to be at arm's-length from Government in fulfilling their functions. 'Though created by statute and appointed by ministers, they exist essentially as independent agents', the report said. They found that regulators should be accountable for cost-effective regulation which meets rational, well-defined objectives – and that 'effective processes for achieving accountability are a key discipline on regulators'.

The Constitution Committee appreciated that accountability is a control mechanism which is an integral part of the regulatory framework. Effective regulation required effective accountability. As such, they looked at the preparation of regulatory impact assessments (RIAs) and ensuring regulators have subjected their decisions to a cost-benefit analysis as central to accountability. The experience of Covid-19 taught us that the well-intended system of additional, criss-crossing arms of government is over. We have a new system in which the authority of the ALBs operates alongside thin or non-existent notions of accountability and legitimacy.

However, accountability can be improved upon. The role of decision-making in Covid restrictions means that policy has often been created with significant ALB involvement but without any rigorous cost-benefit analysis, impact assessment or any wider commitment to genuine public consultation, and therefore outside the bounds of democratic accountability.

In terms of PHE, parts of which will now be integrated into another agency, the UKHSA, which may in time suffer a similar fate because our crude experiments in so-called government efficiency have given way to a displacement of public accountability. Whilst executive power may be more easily bolstered in the short-term if it avoids the watchful gaze and scrutiny of a vigilant electorate, media and parliament, that is to miss the fundamental democratic point about our institutions of state. They should be driven to deliver and be held accountable to the people they serve. In the context of the pandemic, the historic trend towards 'agencification' has been strongly amplified by an overreliance on experts in distinct fields of policy. This can have significant outcomes outside of a group's remit and which are increasingly being viewed as not strictly technical. In the policy-making process, the ALBs enable enlarged executives populated by governing elites to remove important (and sometimes contested) issues from wider public debate in society. At the very least, an urgent rebalancing is required in order to review how ALBs can in the future, or if at all, provide genuine accountability to the public in tandem with their ability to perform in line with set objectives.

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[165] Select Committee on the Constitution, 'The Regulatory State: Ensuring its Accountability', https://publications.parliament.uk/pa/ld200304/ldselect/ldconst/68/68.pdf

Our traditional model of policy-making suggests that parliament represents and interprets the public will through MPs. The governing party's MPs support government ministers who then proceed to bring forward policies. Those policies are thereby implemented impartially and in a non-political manner by civil servants. But as both Covid-19 and net zero obligations show, after decades of descent into a Whitehall model of government and an increasing neo-corporatist reliance on advisory and interest groups, there has been a substantial shift away from this traditional model.[166]

Britain has moved towards a different quasi-corporatism because an alliance between ministers, civil servants, as well as the power of advisory and pressure groups has given those advisers and activists a substantial role in the policy-making process.[167] But the emergency nature of Covid-19 has amplified the supremacy of Whitehall in policy-making. The civil service has been able to initiate major policy, and at least strongly amend it as it passes through the policy process. In the absence of parliamentary scrutiny – carefully bypassed by both minister and civil servants – it no longer has to respond to the orders of elected politicians, but has become a core centre of power.[168]

Within that, frequently unsettling framework of various ALBs operating at some distance from electorally-authorised sources of authority, the Cabinet Office is confronted with three categories of ALBs: Executive Agency, Non-Departmental Public Body (NDPB), and Non-Ministerial Department (NMD) – and as of 31 March 2019, they include an unwieldy 295 ALBs, 39 executive agencies, 235 NDPBs and 20 NMDs.

Over the last 30 years, we have witnessed a dramatic change in the specific use of executive agencies,[169] not least in the sphere of health policy. They are distinct type of semi-autonomous public bodies which now dominate the structure of central government. It was a model recommended by Sir Robin Ibbs in a 1988 review of the civil service. The objective of the review was to improve the management and delivery of government services while reducing the perceived monolithic elements of the civil service with its desire for centrally set rules and a risk averse culture.

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[166] For descriptions of those models, see Bill Jones, 'The policy-making process' (Chapter 23), p. 544-5.

[167] Based on an interpretation of the different models offered by Bill Jones, 'The policy-making process' (Chapter 23), p. 544-5.

[168] This might be described as the 'Whitehall model', described in Bill Jones, 'The policy-making process' (Chapter 23), p. 544-5.

[169] James, O. Moseley, A., Petrovsky, N. and Boyne, G., 'Agencification in the UK', in Verhoest K., van Thiel S., Bouckaert G. and Laegreid P., 'Government Agencies in Europe and Beyond: Practices and Lessons from 30 Countries', Hampshire: Palgrave Macmillan. 2011, https://socialsciences.exeter.ac.uk/media/universityofexeter/collegeofsocialsciencesandinternationalstudies/politics/projects/executive/Chaptersix.pdf

Few would have predicted back then that while some efficiencies might have been achieved, the civil service traditions of risk-aversion and a wariness of engaging with the public and wider industry would be so widely exported across government and into the ALBs. Nothing could be clearer – from the presentation of net zero policies through to the issuing of Covid-regulations – the meaningful sense of public and parliamentary accountability has been drastically eroded. The electorate is rarely considered as anything but 'end users' of a pre-formed, undebatable policy or service. There are long-term and negative consequences for democracy of ALBs being used to decide highly-interventionist health policies.

A great deal of attention is directed towards the varying degrees of 'independence' of the various ALBs, but this deliberate separation of power can also have highly problematic consequences. Ministers are able to relegate highly contested issues into so-called 'independent' bodies, which in turn can drastically reduce accountability to parliament and the public, including their own responsibility to form a political judgement. Moreover, the bodies may claim 'independence', but from whom? The broad trend reflected in governmental thinking is largely concentrated on how Departments manage the relationship with ALBs, but rarely are questions asked of their independence from narrow sources of external advice, or membership lists formed around leading 'groupthink' narratives within academia, politics or industry.

The Public Administration Committee (PAC) appointed by the House of Commons itself, described over seven years ago how:

> 'Parliament has made some public bodies accountable to Parliament rather than government. These arrangements are variable and inconsistent. Not enough up-to-date information is available. Lines of accountability need to be clarified and in some cases altered.'[170]

Can we now claim to have reached a point where the lines of accountability have been clarified?

The general proliferation of ALBs in the UK and other democracies has posed a real challenge to accountability and transparency. There is a plausible resolution for the Cabinet Office to consider in how it categorises and manages those public bodies. If many other advisory councils and bodies are enabled to operate as advisory NDPBs, sponsored by the responsible Department, we should consider why the enhanced roles of SAGE and NERVTAG could not also occupy a similar position, and made more directly accountable to the public and parliament. After all, NDPBs have a role in the process of national government but are not part of a

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[170] Public Administration Committee, 'First Report: Who's accountable? Relationships between Government and arm's-length bodies', 4 November 2014,
https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11012.htm

government department. They operate at an arm's-length from ministers, though a minister will notionally be responsible to Parliament for the performance of the NDPBs in their departments.[171] Arguably, this is simply not working in many cases.

If comparisons between SAGE and the Advisory Council on the Misuse of Drugs (ACMD) was made, then for an NDPB with advisory competence, the Department usually sets the strategic framework, and advice is impartial and apolitical, with the responsible minister being accountable to Parliament. That does not fit neatly with how SAGE or NERVTAG have worked during the pandemic since members of those virus-specific groups gave views to those specialist groups in addition to carrying out independent interviews in the media on their own personal opinions, undermining their formal role in government. In a discussion on streamlining advisory NDPBs in one report, Tim Ambler, the author and academic, accurately suggests that such bodies should be terminated unless they are either not advisory NDPBs at all, or if there are exceptional considerations. SAGE is such an example because, Ambler argues, 'it is, or should be, a fulcrum for identifying the scientists worthy of being consulted and ensuring valid opinions are represented' – but adding 'It should not be asked to find consensus, as is currently the case.'[172]

Neither could the advice provided by SAGE, NERVTAG or SPI-M be classified as apolitical – it was by its very nature political since it alluded to and controlled (if not directly) the scale of social restrictions people must follow in their homes, schools or in social gatherings with other fellow citizens. Neither did government ministers then approach that community of scientists as an NDPB with advisory functions. Instead, it was approached as though it was a tool for governing, rather than a tool for advice.

We are now at a place in which we should consider that the SAGE structure, along with other scientific public bodies, should begin to migrate towards a model in which they are held to account as advisory NDPBs but with the proviso, that, in the twenty-first century, they should be made more directly accountable to parliament and the public, not merely to ministers. Why could such bodies not invite an expanded panel of lay members – from retired GPs through to former parish chairpersons to finance managers – to serve on their boards in order to respond to particular policies or guidance in the documentation presented? Since they would not be a member of the organisation, they may offer a sense of scrutiny more closely aligned to public concerns and the public interest.

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[171] GOV.UK, 'The Arms Length Body (ALB) landscape at a glance', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902991/Public_Bodies_2019_2020.pdf
[172] Tim Ambler, 'Streamlining the Quango State', https://static1.squarespace.com/static/56eddde762cd9413e151ac92/t/5f7ed36a04f8d44f451e64f6/1602147181873/Streamlining+the+Quango+State+-+Tim+Ambler+-+Final.pdf

The issue of public accountability is central, particularly given that the Public Administration Committee (PAC) concluded in November 2014 of ALBs:

> 'As in meetings of local authorities, members of the public should have the right to film, blog and tweet during public meetings of arm's-length bodies. Ministers in sponsor departments should hold public bodies to account for failing to hold public meetings or publishing the minutes of their meetings, and provide an explanation of how this is being addressed in departmental annual reports.' [173]

This sense of ministerial and public accountability can be further buttressed by parliament so that MPs and sub-select committees (as suggested above) would hold public bodies to account for failing to hold public meetings or publishing the minutes of their meetings, and be able to call for an explanation of how this is being addressed or rectified via committee proceedings.

Following a partial science

Ministers repeatedly stated throughout the Covid-19 crisis that they would continue to be 'guided by the science' as a governing principle. But what does it mean to be guided by the science? Paul Cairney, a Professor of Politics and Public Policy at the University of Stirling, has argued that 'advice-giving and advice-seeking form part of an iterative political process'. Insider experts are not just giving advice. They are both 'responding to requests for information' and 'following the rules of the game when tailoring their advice to ministers' – with core and specialist advisers recurringly operating 'within the general confines of what might work in the UK political context'.[174]

Paul Cairney suggests science advice does not contribute to a model of 'evidence-based policymaking' or 'policy learning' as such; instead, the use of evidence is part of a political process in which the status and strategies of participants can matter more than the evidence. He therefore argues that if scientists aim to inform government policy, they usually have 'a stark choice': either 'to speak truth to power or to follow the rules of the game within government.'[175]

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[173] Public Administration Committee, 'First Report: Who's accountable? Relationships between Government and arm's-length bodies', 4 November 2014, https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/110/11002.htm

[174] Paul Cairney, 'The UK Government's COVID-19 Policy: What Does "Guided by the Science" Mean in Practice?', https://www.frontiersin.org/articles/10.3389/fpos.2021.624068/full

[175] Paul Cairney, 'The UK Government's COVID-19 Policy: What Does "Guided by the Science" Mean in Practice?', https://www.frontiersin.org/articles/10.3389/fpos.2021.624068/full

Within that policy-making process, the advisers consider both technical feasibility and political feasibility.[176] Cairney therefore argues that if advisers concentrate on what seems politically feasible for ministers to announce and anticipate policy-maker concern about a shift toward imposition, then maximal influence relates to what seems politically feasible rather than the maximum possible policy change, or their preferred position.[177]

There is then a question as to whether SAGE members felt forced to self-censor their private advice to ministers, based on what they thought ministers would support. And there is also a compounding argument that SAGE is 'dominated by too narrow a group of medical scientists and modellers at the expense of others such as external public health experts.'[178] As other research by Cairney and Wellstead found, 'ministers invested high trust in their closest science advisors', but the development of trust through a limited style of interaction between a small group of people in an insulated environment effectively produced unintended consequences which can potentially lead to distrust of expert outsiders and undermines useful challenges to key mistakes.[179]

In a broader context, John Kay and Mervyn King have highlighted how the government's emphasis on evidence-based policy 'too often reduces… to policy-based evidence'. That is, information is provided to support the conclusions that those who prepare the studies believe policy-makers seek.[180] They are now rarely used as a genuine input to the decision-making process but rather to justify a pre-determined course of action to those in government. Although Kay and King do not specifically analyse Covid-19 modelling in detail, we can easily see how those who coordinated the Covid response wanted some reassurance that the risks of some of their policies were controlled and that the pre-existing policy of lockdowns and tiered restrictions could proceed without any major reservations in the UK context. It is therefore an attempt to resolve uncertainty, but to borrow Kay and King's words, to provide 'superficially objective justification for a decision which has been made on other grounds'.[181]

The question then becomes how we can ever discern scientific claim from political feasibility and the desirability of a policy. How did the near total dependence on SAGE by ministers

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[176] Paul Cairney, 'The UK Government's COVID-19 Policy: What Does "Guided by the Science" Mean in Practice?', https://www.frontiersin.org/articles/10.3389/fpos.2021.624068/full

[177] Paul Cairney, 'The UK Government's COVID-19 Policy: What Does "Guided by the Science" Mean in Practice?', https://www.frontiersin.org/articles/10.3389/fpos.2021.624068/full

[178] Tom Sasse, Dr Catherine Hasson and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf

[179] Paul Cairney and Adam Wellstead, 'COVID-19: effective policymaking depends on trust in experts, politicians, and the public', https://www.tandfonline.com/doi/full/10.1080/25741292.2020.1837466

[180] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. 370.

[181] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. 370.

produce something so much greater than 'an advisory group'? In an article for *The Telegraph,* 'We really need an inquiry into how Sage forced Britain into lockdown',[182] the journalist Fraser Nelson proposes that one of the main issues of the coronavirus pandemic is 'why the Sage group of advisers ever ended up with so much power.' He states that ministers used SAGE as 'a convenient political shield', calling it 'a political decision to stand behind a group of advisers – who had been asked to focus on only one part of a mixed crisis.' Therefore, Nelson contends that ministers' decision to stand behind SAGE 'was a major failing with huge consequences.'[183] An important element of reform is to sever the connection with groupthink within state-backed advisory groups. In the Australian context, Windholz discusses the insights and implications of a technocratic Covid architecture. Exposing our regulatory proposals and the supporting advice from a diversity of perspectives is a fundamental part of better regulatory principles. It is especially important that proposed public health emergency measures are subject to this diversity. It is known that scientific and technical experts within government can be narrow in focus. Experts work within communities of like-minded individuals who share their worldviews, and who have the same expectations and hypotheses about the subject matter. It makes them, in Windholz's words, susceptible to 'a range of cognitive biases'.

Reform of the minister-SAGE network must reflect further on the role of 'modelling' – how to understand and appreciate modelling techniques – and the reasons why it can be distant from the realities of what is unfolding on the ground during a public health emergency. We can often incorrectly look to modelling as an attempt to describe the real worlds rather than a range of potential outcomes. John Kay and Mervyn King suggest that such models are essentially only helpful if the person using them understands that they do not represent (in a literal sense) the world as it really is, but rather a tool for exploring ways in which a decision might go wrong.[184]

The use of the R-number throughout the pandemic is an example. We should consider the views of Professor Philip Thomas (specialising in Risk Management at the University of Bristol), who is a sceptic of SAGE's 'pessimistic' modelling during the coronavirus pandemic. He argues it has caused the Prime Minister to receive 'inaccurate estimates of the R-number throughout the pandemic'.[185] Thomas discusses Professor Neil Ferguson's modelling work and the government's Scientific Advisory Group – who he claims 'have overcomplicated their modelling'.

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[182] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/
[183] Fraser Nelson, 'We really need an inquiry into how Sage forced Britain into lockdown', https://www.telegraph.co.uk/news/2021/05/13/really-need-inquiry-sage-forced-britain-lockdown/
[184] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, pp. 376-7.
[185] Philip Thomas, 'How did Sage get it so wrong?', https://www.spectator.co.uk/article/How-did-Sage-get-it-so-wrong

Thomas notes that as late as 30 March 2021, Professor Ferguson's team at Imperial College were predicting 'that only 45 per cent of the population would be protected against severe disease by 21 June'. However, as he also notes, evidence based on the ONS measurement shows that 68 per cent of the population already had antibodies against Covid-19 by 7 April. He suggests this means 'they would certainly have a fair degree of immunity, and thus be protected from serious illness.' Thomas is particularly critical of this as he contends that the growth in antibodies in England's population could be predicted using an uncomplicated computer model – noting that the model he developed at the University of Bristol was able to match to within a percentage point the ONS figure on 7 April.

In addition, Thomas notes that whilst Ferguson's team at Imperial College has been notable for its pessimistic predictions, it has not been alone. He points out that a study from the London School of Hygiene and Tropical Medicine (which also contributed to SAGE's interim roadmap assessment in advance of the steps out of lockdown in 2021) included 'bewildering low figures' in its assumption of the effectiveness of the Oxford-AstraZeneca vaccine.

It is also suggested by Thomas that SAGE's process of deciding the R-number (an online debate between academics from 11 institutions who each argue for a particular figure) should be considered 'not scientific', and contends it 'has produced answers of dubious worth.'[186] He identifies key problems with SAGE's working, such as the fact their estimates are 18 days out of date when they arrive and even then, they are inaccurate. Accordingly, Thomas suggests it is a 'terrible shame' the government had not been guided by the ONS-based estimate of the R-number because they were 'fully scientific' and 'only nine days in arrears when they arrive'. Had the government looked more widely for advice at that stage, even to the responsible public authorities, then less pessimistic, much earlier and easily available advice could have been found. There was an alternative.

SEAGE: Do we need a Social and Economic SAGE?

In January 2021, the House of Commons Science and Technology Committee published an analysis of the way the government received and applied the scientific advice and evidence during the first period of the coronavirus pandemic – and were eager to ensure that decisions were being made in as wide and appropriate a range of disciplines and perspectives as necessary. One piece of think-tank research had observed 'the prominence of SAGE evidence without clear discussion of the other evidence (such as economic advice) had created a

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[186] Philip Thomas, 'How did Sage get it so wrong?', https://www.spectator.co.uk/article/How-did-Sage-get-it-so-wrong

perception of conflict between ministers and scientific advice – such as the timing of the second lockdown.'[187]

The Science and Technology Committee found that the evaluation of other factors that the government takes into account to determine policy – such as impacts on livelihoods and educational progress – had been 'markedly less visible' than the public health data. Given that coronavirus had 'wide-ranging' impacts 'on the public as a whole and at the individual level' (such as its impact on mental health and education), there was a notable gap they found which 'persists in the transparency of the advice that is given to the Government, outside of the auspices of SAGE, particularly on the topic of nonmedical impacts of the pandemic and related Government interventions.' The Committee even highlighted that SAGE guidance itself indicates that for the full range of issues to be considered, advice needed to stem from a range of disciplines, including the scientific, technical, economic and legal.

The failure to reconcile fundamental economic data with public health plans were clear from an earlier report of July 2020 by the Public Accounts Committee. They found that the government had failed 'to consider in advance how it might deal with the economic impacts of a pandemic', despite a pandemic being 'the government's top non-malicious risk for years'.[188] For instance, despite the first coronavirus case in England being reported on 31 January 2020, they found:

> '…the Treasury did not announce plans for significant funding to support businesses and individuals until the budget on 11 March, and it did not become clear to the Treasury until the following week that a furlough scheme would be needed.'

Therefore, in their view, the Cabinet Office should review its contingency planning for the most serious risks and ensure that these consider whole-of-government impacts.

One think-tank report recommended that 'government must integrate scientific advice better with other forms of advice, particularly with the economic advice given to the chancellor.'[189] As the researchers at the IfG suggested, 'It is ultimately for the Cabinet Office – not an external advisory committee – to bring different strands of analysis together into coherent advice.' The government must 'improve the way it sets out the trade-offs it is facing', and that includes the publishing of further economic analysis.[190]

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[187] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf
[188] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/
[189] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf

[190] Tom Sasse, Dr Catherine Haddon and Alex Nice, 'Science advice in a crisis', https://www.instituteforgovernment.org.uk/sites/default/files/publications/science-advice-crisis_0.pdf

Professor Chris Whitty had told the Committee that SAGE was not giving the government economic advice and did not have a 'specific economic group'. He suggested 'SAGE was "not constituted" to give economics advice and would require a "different membership" in order to do so.' He cautioned that this could expand SAGE's operation into 'such a large group that it is almost impossible to do what it is currently doing.'[191] However, Professor Whitty did acknowledge that the Director of Economics in the Treasury had fed in 'important insights' due to her 'different disciplinary and intellectual background'. Contrarily, Sir Patrick Vallance told the Committee that economic analysis took place elsewhere (the Treasury and Cabinet Office), stating: 'economic analysis was "not something that takes place in SAGE, nor should it take place in SAGE".'[192]

Irrespective of whether Chris Whitty or Patrick Vallance were correct on the role of incorporating economic analysis, the endpoint is surely to consider an integrated strategy which 'takes into account' that economic advice is not a primary objective of any one powerful committee. Chris Whitty's conclusion, however, that SAGE did not have a specific economic group, and nor could it be made practicable, should suggest to the government that they build a parallel committee of economists and social scientists. A Social & Economic Advisory Group for Emergencies (SEAGE) would provide economic and social advice to support government decision-makers during emergencies. Whereas SAGE is responsible for ensuring that timely and coordinated scientific advice is made available to decision-makers to support UK cross-government decisions in the Cabinet Office Briefing Room (COBR), so too could SEAGE provide high-level advice, and again it would not equate with official government policy. It would not be packed with narrow academic opinion, single-issue campaigners, or trade union interests, or those seeking to hamper immediate practical emergency plans, but government officials, trained economists and social scientists with decades of experience outside purely desk-based, public sector environments, with some appreciation of the 'what, when, where and how' of rapid resource distribution.

Such an effort would need to be reconciled with opinion inside HM Treasury and the Department for Business, Energy and Industrial Strategy (BEIS). For example, Philip Duffy (Chief Scientific Adviser at HM Treasury) told the Committee 'his view that the Treasury had "significant influence" on the questions put to SAGE for consideration'. He also suggested 'he was "nervous" about the suggestion of creating "some form of economic SAGE or a social policy

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[191] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf
[192] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf

SAGE, or some kind of allied group that would look at the broader issues"'.[193] In his view, ministerial decisions had been made with 'a combination of the best science that we can find and our best analysis of the social, economic and political consequences of those choices',[194] although there is now obvious disagreement on this point.

One select committee also held that they were not advocating the establishment of an 'economics SAGE', but did note 'SAGE's remit covers the inclusion of numerous disciplines, including "scientific, technical, economic and legal" expertise.' The way the committee framed the questioning was that it was 'entirely within the gift of SAGE to establish sub-groups to draw in other expertise as necessary.'[195] However, a simple sub-group may not cut the mustard in the long-term – why should economic considerations be viewed as issues from a sub-committee? The committee were assured that a Treasury official had been present at SAGE meetings but that SAGE does not issue economic advice and such advice must be 'received by Government through other avenues.'[196] On that basis, a SEAGE might now seem like a plausible alternative if the current advisory structures are to be retained.

The importance of social scientists and economists being involved is that they could feasibly illustrate the public trade-offs in likely harms, and could make clear the different social and economic courses of action that might be pursued. In a think-tank report by Aidan Shilson-Thomas, Sebastian Rees and Charlotte Pickles, the researchers state that due to the non-health impacts of the coronavirus pandemic, SAGE has faced criticism for failing 'to incorporate expertise in economics and social sciences.'[197] They suggest that if SAGE had incorporated advice from 'social scientists and economists on the trade-offs at stake between different courses of action, the non-health implications of the pandemic response and the social and economic underpinnings of viral transmission', then the advice could rightly 'have both complemented and provided an important challenge function in SAGE discussions.'

A balance needs to be struck so that government can easily call on advisory groups of medical, economic and social experts in an emergency but without sacrificing accountability in governance. In the Australian context, Eric Windholz rightly argues for a decision-making framework that ensures 'technocratic medical-scientific experts function within democratic and

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[193] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf
[194] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf
[195] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf
[196] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://publications.parliament.uk/pa/cm5801/cmselect/cmsctech/136/136.pdf
[197] Aidan Shilson-Thomas, Sebastian Rees and Charlotte Pickles, 'A State of preparedness: How government can build resilience to civil emergencies', https://reform.uk/index.php/research/state-preparedness-how-government-can-build-resilience-civil-emergencies

accountable governance arrangements, without losing the substantive and legitimising benefits that come from their prominent participation.' However, some of Windholz's objectives that might inform its design are difficult to support in the UK context.

Windholz suggests that a framework should create clearer separation between the decision to declare a serious risk to public health exists, and the exercise of powers to address that risk. However, over the longer-term, it is to be noted that risk is both public health and social, and so cannot be reduced categorically into one or the other. Combined medical, economic and political decision-making is required when all citizens within nation states will have to live with an element of risk while pursuing their livelihoods yet minimising the likelihood of catching Covid-19. If Windholz is correct to foresee a system so that 'The power to declare (and terminate a declaration) that a serious public health risk exists' is 'vested in the hands of medical-scientific experts', then it would not resolve many of the UK's glaring governance challenges. If medical-scientific experts only are left to decide its seriousness, we are faced with a culture of rule-based, restriction-enthusiasm. If politicians in the UK are left to decide on considerations of economic, social and political factors, then this could be made to work, but in the current policy frameworking, it still requires some social and technical expertise (such as the SEAGE advisory mechanism proposed above).

3. The weaknesses of ministerial deference to 'the science'

One significant aspect of the secretive, but powerful, elaborate networks that developed through Covid-19 has been the reverence government ministers demonstrated in following the science advice of the advisory groups, which had toxic implications for democratic standards. Where monopolistic types of advice-giving are introduced by ministers, it brings into question broader principles of how we are to be governed. Why did ministers not have a protocol to 'take into account' rather than wholly follow the science?

There is, in reality, no such thing as following 'the science' because, as John Kay and Mervyn King have argued, the nature of science is that it is not all settled – 'all our knowledge is tentative and provisional'. The mantra of 'following the science' is a dangerous one when modelling is being employed.[198] During the pandemic, when attempts were made to establish the spread of transmission, the size of the peak of an epidemic and the speed of its rise could not be predicted in the absence of knowledge. The nature of the virus was not clear. Key factors are necessarily excluded from models, and while models can provide 'insights', they are not descriptions of a disease. As Kay and King suggest, the regular presentations of the R value – that is, the number of people who the disease was being transmitted to by each infected person – were routinely invoked as lying behind the decisions to bring forward lockdown policies. But R values are conceptual and varying, not a scientific constant of the disease. Where epidemiologists frantically adjusted their value multiple times within weeks to match Covid growth rates, that approach was taken to ensure an adjustment of the model to match the experience that was being lived on the ground.

The science cannot tell you what to do, and scientific opinion needs to be based on judgements which weighed insights of epidemiological models against other insights and evidence, and for Kay and King, that includes our incomplete knowledge of the virus, and the response of populations to lockdown measures.[199] That scientific evidence should be placed in the context of wider social and economic factors through the decisions of elected politicians, but 'many of them failed to take that responsibility'. Governments cannot offer unwarranted certainty about their policies since when realities changed – as they inevitably did – then their next steps in suggesting whole new, unwarranted policies ultimately led to a decline in trust.[200]

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[198] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. xxi.
[199] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. xxii.
[200] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p.xxiv.

A comparable and equally limited approach is often taken by government towards net zero policies in dutifully following the Climate Change Committee and other narrow focus bands of pressure groups. In the absence of cost-benefit analyses, this is storing up significant difficulties on poorly justified policies, as well as exploiting the limitations of public and parliamentary accountability. As one energy expert recently told a House of Lords Committee on net zero obligations, our current decarbonisation policies are, in essence, an insurance policy, but it must then pass the basic tests of any insurance policy.[201] First, it must provide real cover. Secondly, the premium must be proportional to the risk. And thirdly, the premium must be affordable in itself. But, as John Constable (Energy Editor, Global Warming Policy Forum) then remarked, 'the climate policies do not pass any of these tests'. They do not provide sustainable emissions reduction. The 'abatement cost' is extremely high in relation to the risk – and they are unaffordable in themselves and 'unlikely to be sustainable in the longer term'. It is seeming more and more deliberate by government that such insurance-like analyses – including impact assessments and cost-benefit analyses – are not conducted on policies. This is likely to be because if the public and parliament knew the extent of the costs of those policies, they would not have been pursued in the first place. This effect demonstrates how the interests of the public are subordinated to those of single-issue pressure groups, contrary to the spirit of our constitutional arrangements.

The radical downside of ministers deferring to SAGE's advice to avoid culpability is that the unchallenged supremacy of limited advice supplants political judgements on governing for the overall good of society. The damage done through elaborate networks is, as Professor Matthew Flinders argues, that the political system becomes subject to multiple accountabilities disorder (MAD). In this, ministers are said to be accountable through so many channels that they then become distracted form their focus on core governmental tasks.

Government has put itself at the foundations of the cultural problem and must shoulder the responsibility of the wider social consequences of the Covid measures: systemic public anxiety, social division, culture wars and blame games between restriction-enthusiasts bolstered by the state and the otherwise powerless restriction-sceptics. MPs within the Covid Recovery Group are on the record disputing ministers' reliance on SAGE, for example, but their resistance was, unfortunately, too often rendered futile by government. The Labour Party, forming the official opposition, seemed rarely sceptical and, if anything, only more ideologically restriction-enthusiastic, arguably traceable to its history as a union-led, 'health and safety' party, less business-like or pragmatic. It too must shoulder the social responsibility and attempt, in the future, to bring about some much-needed social unity.

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[201] Dr John Constable, Energy Editor, Global Warming Policy Forum, in: 'Industry and Regulators Committee, Uncorrected oral evidence: Ofgem and net zero', Tuesday 14 September 2021, https://committees.parliament.uk/oralevidence/2754/pdf/

As two leading House of Commons' select committees found, while 'science' itself proceeds through challenge, and new theories are tested against evidence, it appeared ministers and other advisers reported that they felt it difficult to challenge the views of their official scientific advisers.[202] The responsible position, as the committees suggest, is that those in Government have a duty to question the underlying assumptions behind scientific advice, particularly in a national emergency. However, it was acknowledged by both committees that little evidence was ever found of a sufficient challenger function taking place.

As we swerved unfathomably between lockdown and promises of a roadmap out of lockdown, one helpful and reliable action that ministers could have taken was to develop a compelling narrative. As Kay and King indicate, narrative reasoning can be one of the most powerful devices for organising imperfect knowledge.[203] Understanding the complexity before us was first about setting out a narrative account from all the available details, the knowledge of context based on experience and the advice of others. In the context of Covid-19, the scientific evidence ought to have been placed in the context of wider economic and social impacts – from the high level of intrusion into the civil liberties through to the economic costs of lockdowns – and it is elected politicians in our society that take responsibility for these decisions.[204]

Breaking the monopoly on advice

In both emergency settings and regular policy-making, decisions should be informed by multiple sources of information, acknowledging the varied impacts on society. However, the government appeared to be relying entirely on the one form of epidemiological modelling, and the models presumed a binary choice between eradicating the virus or it becoming endemic.[205] It remains a matter of great concern that one crucial epidemiological modelling projection persuaded the Cabinet to overhaul its approach to Covid-19, as the description in it of the pandemic's worst-case scenario seemingly gave politicians little choice but to act.

Where monopolistic forms of advice-giving have been introduced and left unchallenged, it raises questions about the nature of how we are to be governed in future. Instead of creating an independent external, advisory committee from which ministers can learn during an

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[202] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 155
[203] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. 410.
[204] Kay, John and King, Mervyn, Radical Uncertainty: Decision-making for an Unknowable Future, p. xxii.
[205] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

emergency, ministers have been served during the pandemic by a group with an effective monopoly on advice.[206]

In the early grand meetings which centred on the Cabinet Office Briefing Room (COBR)[207] – defined as the mechanism for agreeing the central government response to major emergencies which have an international, national or multiregional impact – the meetings were mistakenly cast as a grand decision-making institutional mechanism rather than the 'information-sharing' body' they seemed to reflect. Meetings at COBR were, in effect, Cabinet committee meetings, but in that Cabinet Office hierarchy, scientific and technical advice appeared to precede economic advice. The tendency towards 'managerialism' inherent in Cabinet Office architecture relies on reactive responses and targets, but those targets frequently become detached from their intended purpose, leading to managers becoming insulated from outcomes experienced in wider society. As Marc Sidwell argued, for Margaret Thatcher, that sense of managerialism was based on the requirement 'for businesses to be responsive to the demands of their customers' if they wanted to survive. In contrast, during the New Labour reign, it translated into the introduction of a 'corporate managerial culture into state-funded institutions as an end in itself.'[208]

Although COBR is supposed to apply 'risk assessment methodology' and cost-benefit analyses within an appropriate economic model to inform decision-making under the Cabinet Office guidelines, there appeared to have been very little assessment of the impact or cost of policy,[209] not only in its early phases but also after 10 May 2020, when the initial lockdown was released.

The most concerning aspect of the COBR system is how it reinforced ministers' deferential nature – that is, it depends on a scientific committee which supposedly provides technical advice to support ministers but, in reality, becomes an instrument that lacks accountability within a regulatory state. SAGE, who were mostly responsible for ensuring that coordinated scientific advice is made available to decision-makers and advisers to support UK cross-government decisions in COBR, presented forms of advice which do not strictly represent official government policy but, problematically, did effectively become government policy in the pandemic, and without any other body scrutinising that assessment.

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[206] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

[207] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

[208] Marc Sidwell (2020), 'The Long March: How the left won the culture war and what to do about it'. London: New Culture Forum. Chapter 6.

[209] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

MPs in select committees have now widely called for a greater questioning and challenge in the development of policy.[210] Ministers should be prepared to build up the confidence to follow a scientific approach themselves. Where necessary, the Health and Social Care and Science and Technology Committees argued, they must take a more robust approach to challenging the advice given. The Government and SAGE could feasibly address this problem by facilitating a strong counter-challenge to the prevailing scientific advice, for instance by using a 'Red Team' approach.

Accountability as blame deflection?

Writing for a blog, academic researchers Professor Matthew Flinders and Gergana Dimova contend that during the coronavirus pandemic, the 'political emphasis on "the experts" is partly a depoliticisation and blame deflection strategy' to render them, instead of the politicians, as the public face of pandemic decision-making.[211]

Since the beginning of the coronavirus pandemic, it was observable that no statement could be made by a representative of the government without being foreshadowed by the golden phrase that is 'following the expert advice we are receiving', despite politicians dedicating their professional lives to not going MAD (that is, falling foul of multiple accountabilities disorder)'.[212] According to Flinders and Dimova, this is because 'The pandemic is a toxic issue for all politicians' as 'someone will be scapegoated and blamed' for anything which goes wrong. Things will go wrong because 'Decisions will have to be taken on the basis of imperfect information, in an emotional context, by exhausted individuals who are well aware they are dealing with matters of life and death.' Therefore, by politicians stating they are 'following the experts', it could enable politicians to have 'some distance from direct culpability when things go wrong.'[213]

In separate research, Matthew Flinders says that the coronavirus pandemic has seen 'multilevel blame games and new displacement strategies'.[214] Notably, in the UK, we have seen 'tensions grow between departments, ministers, officials, agencies and advisers as the prospect of public accountability becomes ever more immediate.'

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[210] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 159
[211] Matthew Flinders and Gergana Dimova, 'Bringing in the experts: blame deflection and the COVID-19 crisis', https://blogs.lse.ac.uk/politicsandpolicy/bringing-in-the-experts-blame-deflection-and-the-covid-19-crisis/
[212] Matthew Flinders and Gergana Dimova, 'Bringing in the experts: blame deflection and the COVID-19 crisis', https://blogs.lse.ac.uk/politicsandpolicy/bringing-in-the-experts-blame-deflection-and-the-covid-19-crisis/
[213] Matthew Flinders and Gergana Dimova, 'Bringing in the experts: blame deflection and the COVID-19 crisis', https://blogs.lse.ac.uk/politicsandpolicy/bringing-in-the-experts-blame-deflection-and-the-covid-19-crisis/
[214] Matthew Flinders, 'Gotcha! Coronavirus, Crises and the Politics of Blame Games', https://journals.sagepub.com/doi/pdf/10.1177/2041905820933371

Flinders found the push for accountability can become an 'aggressive tool of party political warfare', which is why it drives such 'extreme blame-avoidance behaviour.' Notably, it was only 15 weeks after the WHO declared the outbreak of Covid-19 as a pandemic that 'no less than 15 British parliamentary committees had announced inquiries (some multiple inquiries) into various elements of the government's response.' According to Flinders, any form of the public accountability process is not the problem, but whether scrutineers become part of 'the problem with democracy' through a focus on 'scalp-hunting' and 'shallow adversarial politics' rather than being part of the solution.[215] Flinders argued the Covid-19 crisis would result in 'an outbreak of divisive and disruptive political blame games' as politicians and experts all attempted to avoid taking responsibility for those decisions or opinions that inevitably turned out to be wrong.[216]

Blame games: restriction-enthusiasts versus restriction-sceptics

In many stages of the pandemic, a culture war of blame games was formed between restriction-enthusiasts and restriction-sceptics, as if at some stages to mirror the previous Brexit social divisions between Remainer and Brexiteer groups, respectively. The Prime Minister himself was at the centre of that division, his political record having derived from more one-nation conservative, liberty-seeking, anti-bureaucratic tendencies, set against scientific advisers and Whitehall government officials who, by their nature, were risk-averse and pro-restrictive of binding rules on citizens.

In an article for *The Telegraph*, Fraser Nelson discussed the conflicting views of the Prime Minister, MPs and scientists over Britain's reopening following the national lockdown.[217] One point of particular importance in the article is that before the first lockdown on 23 March 2020, concern was expressed over the potential danger of the government's response taking more lives than the virus itself (by disincentivising people from seeking healthcare). But even after 15 months and over 127,000 deaths, he considered Cabinet ministers unlikely to have ever been briefed about the wider effects of lockdown. The questions and reviews into whether various policies cost more lives than they save has never been considered because estimates had never been compiled.

As noted by Nelson, the emergence of the delta variant of Covid-19 opened up a debate as to whether Britain's roadmap out of lockdown should be slowed down, and showed the 'tactics'

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[215] Matthew Flinders, 'Gotcha! Coronavirus, Crises and the Politics of Blame Games', https://journals.sagepub.com/doi/pdf/10.1177/2041905820933371
[216] Matthew Flinders, 'Gotcha! Coronavirus, Crises and the Politics of Blame Games', https://journals.sagepub.com/doi/pdf/10.1177/2041905820933371
[217] Fraser Nelson, 'Boris is fighting a lonely battle against his own officials to reopen Britain', https://www.telegraph.co.uk/news/2021/05/20/boris-fighting-lonely-battle-against-officials-reopen-britain/

which are being used. Boris Johnson seemingly wanted to reopen society and make the best out of the vaccine success, but then after a new Covid variant appeared, for example, a range of possibilities would be laid out by SAGE and others, with worst-case scenario figures then being highlighted and leaked to the press. We subsequently learnt that when the relevant scientific papers we published, the figures quoted were at the pinnacle of a huge range, or even potentially out of date.[218] In the Cabinet committee, someone – usually Michael Gove – then makes the case for tighter restrictions. Given the division, and as Nelson indicates, it became more difficult to argue against restrictions if no figures were ever produced about their costs or a measure of the balance of harms. Even the travel restrictions were agreed in a ministerial committee without any impact estimates made of the costs on trade, investment, social effects and the wider economy. As Nelson concludes, the basic test for public health is to balance years of life saved (or lost). There was nothing of that nature published by government, and so researchers at Civitas produced their own assessment.[219]

There are several comparisons that can be drawn between restriction-enthusiasm for Covid-19 and other current zero-tolerance, emergency projects for which excessive state power is deemed necessary. The journalist Madeline Grant drew instant parallels between Net Zero and Zero Covid enthusiasts. According to Grant, there are 'startling similarities' between the two ideas in that both its supporters wish to achieve 'illogical, impractical projects whose costs will fall disproportionately on the poorest, with a worrying lack of transparency about their true impact.' [220] Both ideas also offer a degree of 'intellectual cover to those who love state control for its own sake.' And whereas some of those who embrace 'the Net Zero arms race' 'long for the downfall of capitalism', 'some Zero-Coviders possess dubious motives… at least of potentially ignoring the financial consequences of continued lockdown.'

Grant asserts that both can have a devout quality, with Net Zeroers rejecting 'genuinely viable low-carbon alternatives like nuclear power', just as 'it often feels as if there is no level of infection low enough' to satisfy those who wish for there to be zero Covid – with 'occasional outbreaks' of the virus resulting in 'demands' for 'indefinite border closures'. Both the idea of net zero emissions and the idea of zero Covid 'impose elite aims universally.' The journalist also considers the UK's position in terms of wealth: the UK 'cannot remain isolated forever' because of Covid-19, particularly given 'the calamitous economic impact on poorer countries.' Likewise, the lifestyles of well-heeled net zero advocates, as with many work-from-home restriction-

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[218] Fraser Nelson, 'Boris is fighting a lonely battle against his own officials to reopen Britain', https://www.telegraph.co.uk/news/2021/05/20/boris-fighting-lonely-battle-against-officials-reopen-britain/
[219] Tim Knox and Jim McConalogue, 'The cost of the cure', https://www.civitas.org.uk/publications/what-price-lockdown/
[220] Madeline Grant, 'Beware the twin fanatics of Net Zero and Zero Covid', https://www.telegraph.co.uk/news/2021/05/19/beware-twin-fanatics-net-zero-zero-covid/

enthusiasts, are carefully insulated from the inflated costs that flow from their demands, displacing the largely negative impact on those who could not afford such impositions.

It is worth considering what the Canadian Professor of Economics, Ross McKitrick, recently found in relation to aggressive Canadian climate policies – that 'people who want to circumvent cost-benefit analysis often appeal to the "costs of inaction" and they say something like "we can't afford not to."'[221] In other words, the sense of emergency and panic precedes the consideration of evidence and impacts. For McKitrick, the problem with the policies we have framed around commitments to Paris and Kyoto have such small effects on the climate that when standard climate models are run with and without the policies, the accumulation of CO_2 in the atmosphere and the resulting costs of climate change come out about the same.[222] On those terms, we currently seem content to ignore regular impact assessment decision-making and the ability to develop a cost-benefit analysis, at great costs to our economies, society, our health and environment.

Parliamentary resistance to the sidelining

Should ministers follow what they perceive to be the science – or follow the separate impacts on people's livelihoods and the economy? When serious questions were raised about ministerial reverence for the science, it was often to scrutinise erroneous data (particularly, to justify England's second national lockdown), the use of blanket restrictions, and fundamentally, to reconsider the real-life impacts that restrictions were having across wider society. One crucial aspect of MPs' concerns expressed in the second lockdown were the ministerial dependence on, and interpretation of, scientific advice, understood to be untransparent, employing old data or data too narrow in its focus. For example, following Boris Johnson's announcement of a second lockdown in October, the UK Statistics Authority had criticised the way in which the government presented the data used to justify the lockdown, saying that there needed to be greater transparency about data and how predictions were being made. The Chair of the UK Statistics Authority, Sir David Norgrove, said whilst he recognises the pressure 'faced by all those working on decisions related to coronavirus… full transparency of data used to inform decisions is vital to public understanding and public confidence.'[223] At that stage, the UK Statistics Authority highlighted the use of modelling on a major weekend TV

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[221] Ross McKitrick, 'Presentation to the House of Commons Standing Committee on Natural Resources', https://www.rossmckitrick.com/uploads/4/8/0/8/4808045/mckitrick-presentation.06.21.2021.pdf
[222] Ross McKitrick, 'Presentation to the House of Commons Standing Committee on Natural Resources', https://www.rossmckitrick.com/uploads/4/8/0/8/4808045/mckitrick-presentation.06.21.2021.pdf
[223] BBC News, 'Covid: Regulator criticises data used to justify lockdown', https://www.bbc.co.uk/news/health-54831334

briefing showing the possible death toll from Covid in the winter of 2020. The projections had been out of date and significantly over-estimated deaths.[224]

The significant side-stepping of MPs and parliamentary debate was frequently recorded within parliamentary proceedings:

- The absence of opportunity to scrutinise data was of particular concern. A group of Conservative MPs, led by Theresa May, lined up to criticise the government over the way in which they used data to justify England's second national lockdown. MP Imran Ahmad Khan called the modelling used 'unpardonable' and said 'some of the evidence presented to the Prime Minister and broadcast to the nation, was not fit for purpose.'[225]

- But, as was later highlighted to the Prime Minister, those errors were of a constitutional order – again, had the government simply given way to 'following the science'? The Tory MP Iain Duncan Smith wrote a column for *The Sunday Telegraph* in which he accused the Prime Minister of 'giving in to the scientific advisers' – who he claimed had 'pressurised' the government in an 'unprecedented' way. Duncan Smith said that although advisers usually 'advise and ministers decide', the 'system has broken down with Sage believing its advice to be more like commandments written on stone and its members publicly lecturing the Government over the airways when it disagrees.'[226]

- The absence of government stepping up to govern had resulted in an inability to consider alternatives to regular acquiescence to the epidemiologists and the resulting blanket restrictions. Duncan Smith wrote a further article for *The Daily Mail* in which he expressed his view that the regional tiered system remained a better option in order to balance 'the wider needs of the country against the threat of the virus spreading', especially as the WHO had warned leaders to 'stop using lockdown as their primary control method.' Duncan Smith was also critical of the reasoning behind a lockdown, given his concern that we might take this option 'on the basis of a flawed prospectus', and that we did not want to find out at a later stage 'that Sage's blood-curdling warnings of apocalyptic levels of infection and death were not based on data that was

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[224] BBC News, 'Covid: Regulator criticises data used to justify lockdown', https://www.bbc.co.uk/news/health-54831334

[225] Geraldine Scott, 'Downing Street defends statistics used to justify second lockdown after criticism from MPs', https://www.yorkshirepost.co.uk/health/coronavirus/downing-street-defends-statistics-used-justify-second-lockdown-after-criticism-mps-3027697

[226] Charlie Duffield, 'Iain Duncan Smith accuses PM of 'giving in to scientific advisers' as Tory rebels seethe over lockdown', https://inews.co.uk/news/politics/iain-duncan-smith-prime-minister-tory-rebels-lockdown-744444

reasonable, fair and correct.'[227]

- On 4 November 2020, the day on which Parliament voted to pass England's second lockdown plans, Sir Charles Walker told the House of Commons why he would not vote for the lockdown legislation. He argued that supporting the lockdown would be supporting the removal of people's fundamental rights.[228]

- A great deal of attention was highlighted on the need for 'trade-offs' and to consider the impacts and alternatives of lockdown guidance. Following the Prime Minister's announcement of a second national lockdown in England, Peter Bone said (at that stage) he was undecided if he would vote in favour of the second lockdown, noting, in particular, the trade-offs which would happen if another lockdown were to come into force. He asserted that it was no longer 'just about Covid' and that other impacts of a lockdown needed to be looked into:

  'We're hearing all the problems with the disease and seeing charts showing how bad the disease is. Where are the charts showing how many people are committing suicide? How many are suffering from really serious depression from this? How many operations are being cancelled? How many businesses are being destroyed?'[229]

- Where were the ministerial considerations of the economic impact? In a tweet on the Monday after England's second national lockdown was announced, Sir John Redwood said:

  'The proposed lockdown will be damaging to livelihoods and business. The government should work with business to allow more to stay open… Why won't the government advisers and NHS management give us believable forecasts rather than hugely wide and some wild illustrations of worst cases?'[230]

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[227] Iain Duncan Smith, 'I hope the scientists have got their sums right: IAIN DUNCAN SMITH fears collective failure in response to the virus will leave the UK and others teetering on the edge of economic and political disaster', https://www.dailymail.co.uk/debate/article-8903617/IAIN-DUNCAN-SMITH-hope-scientists-got-sums-right.html

[228] Channel 4 News, 'Sir Charles Walker: "This legislation goes against my every instinct"', https://www.facebook.com/Channel4News/videos/653962481889571/

[229] Kevin Nicholls, ''Another lockdown could do more damage than good,' fears Wellingborough MP', https://www.northantstelegraph.co.uk/health/coronavirus/another-lockdown-could-do-more-damage-good-fears-wellingborough-mp-3022010

[230] Simon Murphy and Peter Walker, 'The lockdown rebels preparing to defy No 10 on Covid restrictions', https://www.theguardian.com/world/2020/nov/02/the-lockdown-rebels-preparing-to-defy-no-10-on-covid-restrictions

- What were the genuine and safe alternatives to lockdown? Speaking in the House of Commons following Boris Johnson's announcement of England's second national lockdown, Philip Davies said he was against the implementation of another lockdown. Instead, he wanted the government to 'offer advice on what people should do to keep safe but allow them to use their own judgement and carry on with their lives, while protecting the most vulnerable.' Davies was particularly concerned about the impact another lockdown would have, asking the Prime Minister to state 'how many collapsed businesses and how many job losses he and his Government believe are a price worth paying to continue pursuing this failed strategy of lockdowns and arbitrary restrictions.'[231]

  Davies then announced that he would not vote in favour of England's second national lockdown. He said that he had 'no faith in the people in the Department of Health and Public Health England making these decisions', and called it 'an outrage and I'm sad people will be put out of work because of decisions cooked up in Whitehall' when the 'numbers do not justify collapsing the economy at all.'[232]

- Adam Afriyie voted against the implementation of England's second national lockdown in November 2020. Before the vote took place, Afriyie spoke in the House of Commons, where he was critical of the impact it would have on business and the economy. Afriyie then told the *Daily Express* that he could not vote for the lockdown and 'destroy businesses and millions of people's jobs and livelihoods', especially as he claimed that 'MPs were given old data and well-meaning speculation, not robust science.'[233]

- What about ministerial consideration of the long-lasting effects on cancelled family interactions? At the beginning of England's second national lockdown, Esther McVey posted a video via Twitter in which she urged the government to lift lockdown. She said:

  > 'Since March, in one way or another, we've been in lockdown and that means some people haven't been able to see their mums, dads, and really close family members.

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[231] Philip Davies, 'Philip Davies MP to vote against National Lockdown', https://www.shipleyconservatives.org.uk/news/philip-davies-mp-vote-against-national-lockdown
[232] Philip Davies, 'Philip Davies MP to vote against National Lockdown', https://www.shipleyconservatives.org.uk/news/philip-davies-mp-vote-against-national-lockdown
[233] George Roberts, 'Windsor MP votes against second lockdown', https://www.maidenhead-advertiser.co.uk/gallery/windsor/163457/windsor-mp-votes-against-second-lockdown.html

'That is really not acceptable…The state should not be able to stop you seeing your closest family members. It's like some dystopian nightmare.'[234]

Those interventions were highly relevant, not least because the UK model of parliamentary democracy rests on MPs in the elected part of the constitution, namely the House of Commons, as forming the jewel in the crown in the democratic process. As such, voters have genuine input, having voted to put specific MPs into that elected place through regular elections and being able to communicate with them freely. Parliament is therefore only able to ensure representative government because MPs serve as a democratic cockpit of the nation in the delivery of some agreed-upon common goods.[235] It is very well understood that if it sacrifices its reputation as a chamber of reasonable debate when it voluntarily foregoes that obligation for some other superior commitment, for example, governance and instructions from a foreign government, unwieldy corporations or even an arrangement of advisers unconnected to the elected parts of the constitution. Through debate and votes in parliament, it is the nature of that institution to maintain a deliberative democracy, not to deliberately cancel scrutiny or debate in the knowledge that society (or some parts of its population) might well disagree with the policies of some new preferred external body or advisers. The regulatory state could be seen to replace our democracy in a predicament where it is decided in the public interest that debate, discussion and argument amongst elected representatives and citizens should no longer be required to decide on *politics* – that is, the public are no longer officially involved in who gets what, when, where and how.[236]

Should ministers 'take account' or follow science?

The immediate passing on of ministerial decisions and accountability during the Covid-19 crisis to a Cabinet system of scientific committees had some negative impacts upon our constitutional arrangements.[237] The traditional British constitutional system operates on the principle of ministerial accountability. UK government ministers are said to inhabit the centre of British government. In legal terms, they are claimed to be the most powerful figures in government. The mantra that 'Advisers advise and ministers decide' is a historic rule of

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[234] Ethan Davies, 'Cheshire MP Esther McVey calls for lockdown to be lifted', https://www.northwichguardian.co.uk/news/18864166.cheshire-mp-esther-mcvey-calls-lockdown-lifted/
[235] Jim McConalogue, *The British Constitution Resettled: Parliamentary Sovereignty Before and After Brexit*, Palgrave Macmillan.
[236] Jim McConalogue, 'Rebalancing the British Constitution: The future for human rights law', https://www.civitas.org.uk/content/files/2438-A-Rebalancing-the-Brit-Const-WEB.pdf
[237] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', 5-6. https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

government which has been reversed during the pandemic and should be returned after the worst of the virus and its variants have subsided.[238]

Research during the early stages of the pandemic questioned the response of the UK government to Covid-19.[239] The reverence which government ministers showed for 'the science' throughout the pandemic and the motto of 'following the science' carried with it negative implications for accountable and transparent democratic standards. I expressed in an earlier report that 'there is no such thing as 'the science' as 'all scientific research is an attempt to contest and advance current scientific knowledge' – our dependence on 'the science' 'provided a form of insurance cover' for politicians, thus reducing the accountability of ministers 'should 'the science' prove to be wrong'. The notion of 'following the science' by definition excludes all the economic costs, the social costs, the psychological costs and the constitutional costs of the policy being considered.

But if ministers do not have any qualifications or experience outside of politics, it is a task for parliament and parties to rise to the challenge so elected representatives are drawn from a pool which seems more likely to have some STEM education, an understanding of evidence or how to approach science in making decisions. How can they possibly judge or evaluate the proportional response to a piece of evidence – suggesting cases of infection are rising rapidly while many other factors mediate that change or increase – if the MP or peer concerned has previously had no experience or training in judging such epidemiological data? They usually haven't, and that is part of the problem.

As the former Bank of England governor, Mervyn King, observed: 'Politicians are used to making announcements. But they have no experience in actually running anything.' We might also bear in mind the late Professor of Politics, Anthony King, also considered how ministers exist to provide the department with broad political direction, while taking the most difficult and contentious decisions. He also said they cannot be reasonably expected to be 'deeply knowledgeable about the varied and complex matters' that fall within their departmental responsibilities.[240] As such, ministers must turn to advisers and senior civil servants for their deeper knowledge and experience. Yet, we cannot escape the fact that ministers should still take the decisions.[241]

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[238] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', 5-6. https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf
[239] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf
[240] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', 5-6. https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf
[241] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', 5-6. https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

One academic study this year found that an over-representation of MPs with social sciences backgrounds has limited debate on STEM (science, technology, engineering, and maths) topics.[242] Although the study from politics researchers at the University of Bath looked specifically at the effect of a scientific education and work experience in relation to MPs' Private Member Bills (PMBs), it suggested political parties need to put more effort into recruiting candidates with scientific backgrounds in order to increase 'cognitive diversity' among MPs. Politicians with STEM backgrounds were more likely to raise policy issues related to STEM subjects. They found that MPs who had both a scientific degree and had subsequently worked in a science-related field devoted 10 per cent more of their PMB proposals to STEM-related issues than MPs with no such background.

In the University of Bath research, of the 541 MPs with higher education degrees in the 2015-2017 Parliament, only 93 (17 per cent) held degrees in STEM subjects. By comparison, 46 per cent of UK students in 2019 graduated in STEM subjects. According to recent analysis of the 2019 intake, MPs with STEM backgrounds or interests still remain largely in the minority (103 MPs).[243]

The researchers suggest the dominance of MPs with social sciences backgrounds has long existed in Parliament. However, they point out that the issue has now become more acute in recent years as policy-makers grapple to understand increasingly complex data and evidence, not least in relation to Covid-19 and climate change.[244] A similar conclusion could feasibly be drawn about the UK civil service, which appears to have lower proportions of employees with STEM backgrounds or in STEM occupations (~2.2–6.8 per cent) than comparator countries, such as the USA (15.9 per cent) and South Korea (~30 per cent).[245]

Professor Hilde Coffé from the University of Bath's Department of Politics, Languages & International Studies explained:

> 'For those already in Parliament with social sciences backgrounds, we should do more to upskill them to ensure they have good scientific literacy and knowledge. Ultimately

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[242] University of Bath, 'Greater scientific expertise needed in Parliament to improve decision-making', https://www.bath.ac.uk/announcements/greater-scientific-expertise-needed-in-parliament-to-improve-decision-making/

[243] University of Bath, 'Greater scientific expertise needed in Parliament to improve decision-making', https://www.bath.ac.uk/announcements/greater-scientific-expertise-needed-in-parliament-to-improve-decision-making/

[244] University of Bath, 'Greater scientific expertise needed in Parliament to improve decision-making', https://www.bath.ac.uk/announcements/greater-scientific-expertise-needed-in-parliament-to-improve-decision-making/

[245] Policy Links Unit, IfM ECS, University of Cambridge, 'STEM professionals in the UK civil service - an international comparative study', https://www.ciip.group.cam.ac.uk/reports-and-articles/stem-professionals-uk-civil-service-international/download/2021-07-02-STEM.pdf

though, we need a diverse Parliament with different expertise and experiences. Achieving this can help us improve the robustness of policymaking.'[246]

Given their further evidence suggesting women with a STEM background are far more likely to become passionate STEM advocates in Parliament than men, there are further considerations that need to be made as to how scientific policy can be better understood in parliament and by ministers.[247]

The notion that a politician would 'follow the science' presents several convenient paths to avoid or limit accountability. As noted by an academic in public law at Worcester College (Oxford), Leah Trueblood, in a piece for the *UK Constitutional Law Association* blog*,* it appears to be a positive idea for politicians to 'follow the science'.[248] But whilst the claim may be laudable, she asks if it could also be 'a convenient way to avoid or limit accountability?' And because of a lack of transparency from the government, she says it becomes 'unclear whether and to what extent substantive decisions are being made by scientists, or if this is just a politically helpful turn of phrase.'

Discussing the way in which scientific advice is communicated with the government, Trueblood notes that at the beginning of the pandemic, advice was given to the government by SAGE. However, as the pandemic continued, the Joint Biosecurity Centre (JBC) was then established to advise ministers and to set the Covid threat levels. While the details remained vague, Trueblood says rather than the JBC 'serving a coordinative function,' it appears the 'JBC will present substantive recommendations to ministers' – something which is particularly problematic as 'there is very little information in the public domain about the membership, staffing, and the working' of the centre. The difficulty presented is that science is not value-free. Scientists disagree, and their disagreements are in a constant process of flux. Where it appears the JBC are making substantive recommendations, 'then they are exercising enormous political power. Potentially even power that only ministers are authorised to use under statutes.'

Ministers following a science which is not of itself value-free and coherent in its assumptions presents a contradiction. As Trueblood claims, although 'taking scientific advice seriously is the right outcome', the government have put themselves 'in a very difficult position' by treating

[246] University of Bath, 'Greater scientific expertise needed in Parliament to improve decision-making', https://www.bath.ac.uk/announcements/greater-scientific-expertise-needed-in-parliament-to-improve-decision-making/

[247] University of Bath, 'Greater scientific expertise needed in Parliament to improve decision-making', https://www.bath.ac.uk/announcements/greater-scientific-expertise-needed-in-parliament-to-improve-decision-making/ ; Joshua Myers and Hilde Coffe, 'The impact of a STEM background on MPs' legislative behaviour' in the Journal of British Politics see https://link.springer.com/article/10.1057/s41293-021-00188-2.

[248] Leah Trueblood, 'Following the Science:' a Legal and Democratic Challenge, https://ukconstitutionallaw.org/2020/09/21/leah-trueblood-following-the-science-a-legal-and-democratic-challenge/

'science as unified and value free'. Accordingly, she stresses that the government must make it 'clear how, and [*on*] what basis, decisions are being made on behalf of the public' so that 'those who make decisions… are held accountable'. Additionally, scientific advice and its underlying data should be made public so that it can be vetted, and scientists must also be made to disclose their interests. It might be concluded from both this assessment of the law and several other similar interventions that to frame governmental pandemic messaging as 'following the science' should in future be better framed as ministers seeking to 'take account of' expert advice.

4. The Democratic Flaw: Ministerial decree versus parliamentary scrutiny

If we are to constructively engage with remaking our democratic model in order to rebuild back better the UK's governance processes, it is necessary to first understand what went wrong in the ability of parliament to scrutinise and hold the government to account. One of the democratic flaws was the capacity of minsters, combined with civils servants, to sidestep the machinery which makes parliamentary democracy workable. Britain has forfeited its primary democratic conventions in making law (as discussed on pp. 45-50). Despite their best efforts, Westminster parliamentary committees might struggle to claim that they had overseen the government's response in a way that other democracies felt they had. Several flaws in the coronavirus regulations would have been caught and reframed by a proper scrutiny process in parliament.

We find in this chapter that the word 'Parliament' was referred to less in all government communications on Covid-19 (three per cent) as compared, for example, with defence/armed forces (six per cent), and much less than government communications on Brexit (25 per cent). Many scholars remain suspicious of ministers' choice of legislative instruments – via the Coronavirus Act 2020 and the Public Health (Control of Disease) Act 1984, by contrast with the Civil Contingencies Act – which avoided, to a significant degree, parliamentary involvement and scrutiny.

A great deal of weight continues to be put by legal and constitutional scholars on parliamentary involvement being scuppered by ministerial scheduling of Covid-related legislative powers during times when parliament would not be sitting. Laws setting out lockdown were introduced within a matter of days by ministers but not revoked for months afterwards, even though their desired objectives – of avoiding peak hospitalisations – had been achieved. Given the emphasis on rule by ministerial decree and the absence of parliamentary scrutiny, it is hardly surprising the public faced the resulting 'fuzz' of lockdown rules.

The well-acknowledged doctrine of parliamentary sovereignty no longer appears to ring true when the warnings to the government by the Speaker of the House of Commons and those MPs associated with the Covid Recovery Group (CRG) are testament to their loss of power in parliament over the regulations. Major announcements on changes to Covid-related policies were no longer being made in parliament – before the scrutiny of 650 elected MPs – but on a

contrived broadcast stage before a select band of journalists and the public, where scrutiny was arguably less focused, non-analytical and more generic.

At the very least, after 10 May 2020, when the government had produced and brought forward plans to come out of the first lockdown, parliament should have returned to its rightful place. It has not completely done this some 21 months into the pandemic. The ability of legislators to freely associate in the tea-room and to fight back against government through informal networks has always been at the centre of organised parliamentary life. But in a moment, they lost the ability to coalesce and construct reasonable opposition, which has been the case for over a year. It was not that MPs did not make interventions for greater involvement at key junctures in the pandemic – it was merely that ministers, and ultimately the Prime Minster, would not concede that power.

The introduction of hybrid arrangements in parliament through the use of remote technologies and the rigid imposition of a 'call list' system radically curtailed MPs' ability to scrutinise, or even constructively critique, policy. Those hybrid arrangements changed on at least 19 occasions. We conduct some simple numerical analysis in this chapter on page 118 which shows the asymmetry of Covid-related parliamentary debates. Tiered restrictions in Leicester received greater attention than the first or third lockdown restrictions coming into force. The combined effect of excessive dependence on Statutory Instruments to make law, which usually bypass parliament, with the highly restrictive and unprecedented impact of many of the Covid regulations on society, left parliament with a markedly reduced role in policy-making, with regulations which had an unprecedented and maximal impact on citizens.

The marginalisation of parliamentary democracy

It is no longer novel to suggest parliament was largely sidelined by government during the pandemic.[249] At first, there may have been good reason to do so for the purposes of a national emergency, but that reason lost its validity as time went on and the emergency turned into normal life. Britain felt it necessary to forego its democratic conventions in making laws.

Certainly, some level of our select committee activity shows that Parliament was not 'shut down' completely over the Easter recess during the coronavirus crisis in 2020, even though this period had created major challenges. For example, as Hansard Society research shows, on 24 March 2020, the House temporarily changed its procedures to allow select committee meetings

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[249] Professor Meg Russell and Lisa James, 'MPs are right: Parliament has been sidelined', https://ukandeu.ac.uk/mps-are-right-parliament-has-been-sidelined/

– including the taking of evidence – to take place remotely. During the Easter recess that followed, the House of Commons Votes and Proceedings for the first sitting day after the break, 21 April, show that seven Commons-only committees and one joint committee took evidence for a single Coronavirus-related inquiry on 12 occasions.[250] This led to an unusual and unexpected result: the Easter 2020 recess seeing 24 per cent of all oral evidence-taking by House of Commons select committees during recesses so far this century. If we considered only the period since 2010, the Easter 2020 recess accounted for almost half (48 per cent) of all recess oral evidence-taking occasions.[251] In fact, given the House of Commons did not enable 'hybrid', semi-remote Chamber proceedings in time before the Easter break, select committees were in effect left as the only vehicle for scrutiny during that early stage.[252] That does not mean, however, that what was termed a 'scrutiny reserve' – which previously restrained the UK government from acting on EU legislation until the European Scrutiny Committee in the House of Commons had cleared it from examination – might now plausibly be considered to apply to several areas of the various Health, Science, and Public Accounts committees in bringing effective scrutiny to Covid regulations.

We might also emphasise that the case for wider parliamentary debate should have always been obvious, not least because 'lockdowns' are such a radical dislocation from all other regular actions for managing pandemics, and there being no proposal or reliable evidence before Covid-19 related lockdowns that they had been thought of in government as an effective way to manage an influenza pandemic.

So, overall, we should be most concerned about Parliament's exclusion from decision-making. Professor Meg Russell and Lisa James at the UCL Constitution Unit argue, on a matter of principle, that Parliament is sovereign and government is accountable to it. And, 'crucially, scrutiny also leads to better policy making' as 'Parliament's veto power encourages ministers to prepare carefully for debates, during which they may identify positions that appear hard to publicly defend, thereby fixing policy defects.' This was partly illustrated in a report by the Public Administration and Constitutional Affairs Committee (PACAC) that identified several

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[250] Dr Brigid Fowler, 'Remote select committee evidence-taking is a Coronavirus change that should be kept', https://www.hansardsociety.org.uk/blog/remote-select-committee-evidence-taking-is-a-coronavirus-change-that-should
[251] Dr Brigid Fowler, 'Remote select committee evidence-taking is a Coronavirus change that should be kept', https://www.hansardsociety.org.uk/blog/remote-select-committee-evidence-taking-is-a-coronavirus-change-that-should
[252] Dr Brigid Fowler, 'Remote select committee evidence-taking is a Coronavirus change that should be kept', https://www.hansardsociety.org.uk/blog/remote-select-committee-evidence-taking-is-a-coronavirus-change-that-should

cases where flaws in coronavirus regulations may have been caught in advance if a proper scrutiny process had taken place.[253]

It is a constitutional, legal and political question of the highest order. Not only do Russell and James state that this raises political questions, but they also state it raises legal questions and broader issues about parliamentary involvement, since it is an established convention that major government policy announcements should first be made in Parliament – 'to be examined and debated by the UK's sovereign body' – not to have policy shifts announced at press conferences or to journalists. And despite complaints from the Speaker and government backbenchers, they have largely been dismissed by ministers.[254]

What did a search of the Government communications on Covid reveal?

As a general representative survey of how government communications referenced parliament, it can be useful to observe what happens when we look through all the government communications records at www.gov.uk online. It is only an approximate measure, but if we confine all our searches to certain subjects – Brexit, Defence, Covid, and so forth – and search only for references to 'parliament', we find that government Covid communications come back with the fewest references (three per cent) to 'parliament'. In contrast, government Brexit communications come back with the highest number of references (25 per cent) to 'parliament'.

Number of times (%) Government communications refer to 'parliament' on various issues

Brexit	Defence and armed forces	Health and social care	Environment	Covid-19
582 of 2367 records (25%)	706 of 11914 records (6%)	966 of 22386 records (4%)	1305 of 27963 records (4%)	129 of 4854 records (3%)

Source: https://www.gov.uk/search/all?order=relevance

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[253] Professor Meg Russell and Lisa James, 'MPs are right: Parliament has been sidelined', https://ukandeu.ac.uk/mps-are-right-parliament-has-been-sidelined/
[254] Professor Meg Russell and Lisa James, 'MPs are right: Parliament has been sidelined', https://ukandeu.ac.uk/mps-are-right-parliament-has-been-sidelined/

Since we proceeded beyond the initial stages the pandemic, Russell and James argue that any 'respectable arguments' which could be made 'for foregoing detailed parliamentary accountability in favour of rapid action' were no longer valid. By the time of writing, they argue that parliament was now fully operational and capable of conducting scrutiny, but say that for the future, 'any concessions must be sincerely offered, and guarantee Parliament full and timely approval powers over future changes'. In their view, MPs must not accept anything less.[255]

Without clear protocols for the future, decisions can be taken that have life-changing effects on members of the public (those with and without infections) and which are based on a ministerial whim. It could easily be argued and evidenced that the role of Parliament had been disproportionately sidelined. We need only to look at the record of government communications (see below).

Again, while we might accept that parliament did respond to the pandemic and lockdowns with a mixture of hybrid arrangements, this did not match the available opportunities and speeches made by MPs and peers in previous years on other parliament-absorbing subjects:

- Between 3 March 2020 and 23 July 2021, parliament debated 'coronavirus' through 6,025 member contributions, 225 debates, 148 written statements and 19 divisions.[256]
- In a similar period between 3 March 2018 and 23 July 2019, parliament discussed 'European' issues through 16,453 member contributions, 277 debates, 318 written statements and 122 divisions.
- In another similar period between 3 March 2017 and 23 July 2018, parliament discussed 'Brexit' issues through 9,504 contributions, 142 debates and seven written statements. (That was also a time when parliament was not sitting for at over one month due to the 2017 general election, 27 April – 13 June.)

Given the importance accorded to the subject, it must surely be conceded that the rights of MPs to intervene and make contributions was severely limited, and not merely on the inability to vote on the regulations.

Ministerial choices of legislative instrument to avoid parliamentary scrutiny

Although the above test is an approximate exercise, there has been significant public debate on the 'coercive powers' exercised by the state during the coronavirus pandemic and the impact

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[255] Professor Meg Russell and Lisa James, 'MPs are right: Parliament has been sidelined', https://ukandeu.ac.uk/mps-are-right-parliament-has-been-sidelined/
[256] Data obtained using the following search function: https://hansard.parliament.uk/search

this had on freedom. British author and former senior judge who sat on the Supreme Court, Jonathan Sumption, cautiously noted that despite behavioural scientists advising against the use of coercive powers – by arguing that 'Citizens should be treated as rational actors, capable of taking decisions for themselves and managing personal risk' – the government chose to not follow this advice, and instead, Sumption suggests, they opted for the choice which would make it 'popular'.[257]

The Coronavirus Act 2020 was passed in four sitting days to deal with Covid-19. In Sumption's view, the Act 'was primarily concerned to enlarge the government's powers to marshal the medical resources of the country and to authorise additional public expenditure', while Schedules 21 and 22 of the Act did encompass additional powers to control the movement of people. However, the Act conferred no power to control the lives of healthy people.[258] The Coronavirus Act 2020 was pushed through all its stages very quickly in each House as the lockdown was announced. Its measures were designed to control those who were infectious and to call on the police to enforce their directions; to forbid 'events' or 'gatherings'; and to close premises for the purpose of controlling the transmission of the virus.[259]

It remains highly relevant to consider Sumption's analysis of how lockdowns were achieved under public health legislation. Part IIA of the Public Health (Control of Disease) Act 1984, as amended in 2008, was never really intended to authorise measures as drastic as those which have been imposed.[260] Sumption claims the government opted to use the Public Health Act for lockdown power because, by comparison with the Civil Contingencies Act, 'the degree of scrutiny provided for under the Public Health Act is limited'.

This became a helpful device for government because regulations under the Public Health Act have provisional validity, pending parliamentary approval, for 28 days. Parliament cannot amend them, and once it has approved them, it cannot then revoke them. In Sumption's view, they remain in force for whatever period ministers may decide.[261] The Civil Contingencies Act 2004 gave the government the power to confine healthy people, as well as effectively authorising government by executive decree,[262] but the government instead opted for the use

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[257] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[258] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[259] Lord Sumption, 'Government by decree: Covid-19 and the Constitution', https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf
[260] Lord Sumption, 'Government by decree: Covid-19 and the Constitution', https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf
[261] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[262] Lord Sumption, 'Government by decree: Covid-19 and the Constitution', https://resources.law.cam.ac.uk/privatelaw/Freshfields_Lecture_2020_Government_by_Decree.pdf

of the Public Health Act. Sumption suggests the government made this decision because the Civil Contingencies Act required a great degree of parliamentary involvement and scrutiny – which ministers were eager to avoid. As he expresses it, this sense of 'government by decree is not only constitutionally objectionable' but 'bad government'. As the former judge suggested, such a concentration of power in so few a number of hands, combined with the absence of wider debate and scrutiny, enables government to wing major decisions, without any proper planning.[263]

There is some suggestion in his analysis that parliamentary involvement was scuppered by ministers' scheduling of Covid-related legislative powers. It is central to our understanding of the initial actions in the pandemic that parliament was written out of the passage, amendment or debate of any of the restrictions which were about to come into force. When the Prime Minister announced lockdown on 23 March 2020, and said he was stopping gatherings of more than two people in public and all social events except funerals – Lord Sumption described it as an 'instruction'. However, on Sumption's analysis, the government had no power to give such orders without making statutory regulations – and no such regulations existed until 1 p.m. on 26 March. The Prime Minister had no power to give 'instructions' and the police had no power to enforce them. For Sumption, these early statements had no legal status. One answer to why the government did not wait for three days until 26 March before making their regulations, Sumption suggests, was because parliament adjourned for the Easter recess on 25 March, the government deliberately delayed their urgent regulations so that there would be no opportunity to debate them before the recess.[264]

Partly by accident and partly by government plotting around the House of Commons timetable, parliamentary scrutiny had been radically curtailed. A future inquiry should try to establish how far ministers went to avoid scrutiny. If all those troubling aspects of ministerial manoeuvring are truly accurate, then the government achieved a constitutional revolution within a matter of days that are at least on a constitutional par with the European Communities Act 1972 and the Human Rights Act 1998.

The former Supreme Court judge further suggests that fear was deliberately stoked up by the government 'in order to justify the extreme steps which the government had taken, and to promote compliance.' In that sense, the public's fear effectively silenced opposition in the House of Commons. Not even the official opposition dared to challenge the government, except to suggest that they should have been even more restrictive and sooner. Sumption's

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[263] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[264] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy

thinking was that parliament needed to 'rise to the challenge of controlling the most determined attempt by any modern government to rule by decree.'[265]

It can easily be understood that the fast-changing guidance itself created public anxiety, if not fear. As Laura Dodsworth has illustrated, the way in which people have been terrified by the thought of Covid is exemplified by the contrast between how Patrick Vallance told the nation on 13 March 2020 that 'the vast majority of people get a mild illness',[266] but just 10 days later, Boris Johnson warned of 'the devastating impact of this invisible killer'.[267] The author finds the messaging mutated faster than the virus of the scientific evidence.[268]

It also remained unsurprising to the former judge that the government – having announced on 23 March that the lockdown would last until the NHS was able to cope with peak hospitalisations – continued with those restrictions into May and June, after this objective had been achieved. Ministers took this approach even though the warning by scientific advisers in reports submitted to SAGE in February and March indicated that a lockdown could delay infections and deaths but not stop them. One notable feature of Sumption's view is that fear persuaded people to accept the surrender of their liberty, even when the lockdown was no longer able to achieve the objective originally set for it. Had regulations been made under the Civil Contingencies Act, those restrictions would have had to be reapproved by parliament every 30 days, and at least in theory, parliament could have called for a robust rationale for the government's decision.[269]

Fuzzy lockdown rules – a byproduct of cancelled scrutiny?

Given the strong emphasis placed on ministerial decree and the absence of parliamentary scrutiny, it can be helpful to understand the human rights barrister Adam Wagner's observation that those rules have become 'impossible to follow', with ministers moving 'key features so that users can no longer find them' and issuing 'complete redesigns with no warning or instructions on how to use the new version.' Moreover, complex local tier systems still resulted

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[265] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[266] 'UK's chief scientific adviser defends 'herd immunity' strategy for coronavirus', https://www.ft.com/content/38a81588-6508-11ea-b3f3-fe4680ea68b5
[267] Boris Johnson, 'Prime Minister's statement on coronavirus (COVID-19): 23 March 2020', https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-23-march-2020
[268] *A State of Fear: How The UK Government Weaponised Fear During the Covid 19 pandemic* by Laura Dodsworth, p. 99.
[269] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy

in a third lockdown. The country watched as serious interferences were not given time limitations, such as the 'explicit ban on travel outside of the UK without a reasonable excuse.'[270]

Much of this is understood by Adam Wagner to result in the 'fuzz' of lockdown rules. He points to the fact that a UCL study showed that as lockdown progressed, the public understanding of the rules diminished. The author also suggests that those enforcing the rules 'seem just as befuddled'. Since nine out of 10 officers felt the regulations were not clear and a fifth of prosecutions under the regulations were incorrectly charged (at that time), and of the 246 prosecutions under the Coronavirus Act 2020, every single one was then found to have been wrongly charged, it seemed the police have felt ill-at ease with those poorly defined public health roles.[271]

One of the core features of this poor, blanket legislation is poor scrutiny and consultation. An early report for the UCL Constitution Unit found that 'Much of the initial legislative response to the pandemic raised concerns about the government's ability to take drastic measures without proper parliamentary scrutiny.'[272] For instance, as mentioned above, the Coronavirus Act completed all of its parliamentary stages in a matter of days despite all the 'wide-ranging changes' it made. This led to 'concerns about broad changes being enacted with minimal scrutiny'. The significance of scrutiny should not be underestimated; the supremacy of parliament within UK constitutional arrangements is paramount.

Given the absence of scrutiny, it is not surprising, then, that the UCL report found there was 'a blurring of boundaries' between law and the government's guidance – 'which raised the question of what 'rules' people were actually required to follow.'[273] MPs were regularly noted as giving contradictory answers to questions about social distancing, getting the law wrong, and not being clear about when they were making statements which only applied to England.

Parliament's sovereignty and the requirement of scrutiny and accountability

Parliamentary sovereignty is a fundamental principle of the UK's democratic constitution. Parliament is accepted as the supreme legal authority in the UK, which can create, amend or reject any law[274] – but arguably, if it can no longer amend or reject Covid regulation, parliament

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[270] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay
[271] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay
[272] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf
[273] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf
[274] UK Parliament, https://www.parliament.uk/about/how/role/sovereignty/

is anything but 'a supreme legal authority'. The courts cannot overrule its legislation and neither can Parliament pass a law that future Parliaments cannot change. Parliamentary sovereignty is the most important part of the UK constitution.[275]

Parliament's integral role is to examine and challenge the work of the government. The House of Commons and the House of Lords use similar methods of scrutiny, although their procedures can be different.[276] Parliament enables the questioning of government ministers, as well as debating and the investigative work of committees. The government can and should then publicly respond to explain and justify policies and decisions.[277] The Prime Minister himself answers questions every sitting Wednesday afternoon. In normal times, MPs and Lords do have the opportunity to question government ministers either directly on the floor of the House during the regular oral question times or, as and when appropriate, sometimes in writing. In the absence of those opportunities, which in turn guarantee scrutiny and accountability, it cannot plausibly affirm the exercise of sovereignty within the UK constitutional regime. The absence or avoidance of debate during these times suggests a bypassing of scrutiny and accountability, bringing into question the sovereignty of parliament as our primary rule-makers.

Treating Parliament with 'contempt'

From whichever perspective we look at parliament – from the right of MPs to fight back and challenge the government through to the detailed scrutiny of select committees – the attitude of ministers was frequently to brush them aside. The degradation of the role and quality of parliamentary input into the Covid law-making process was palpable inside parliament. In September 2020, the Speaker of the House, Lindsay Hoyle, said he was unable to give MPs a vote on getting a bigger say on renewing emergency powers after dozens of Conservative MPs were backing an amendment put forward by Sir Graham Brady. This called 'for future regulations affecting the whole of England only to be introduced if Parliament has the opportunity to debate and vote on them in advance.'[278] At the time, MPs were due to vote on a motion that would extend the Coronavirus Act – granting significant powers to the authorities to tackle Covid – but the Speaker said 'any amendment to that motion risked creating uncertainty about the legality of the Act, and potentially opened it up to court challenge.' It highlighted how MPs were, in reality, constrained.

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[275] UK Parliament, 'Parliament's authority', https://www.parliament.uk/about/how/role/sovereignty/
[276] UK Parliament, 'What is the role of Parliament?', https://www.parliament.uk/about/how/role/
[277] UK Parliament, 'Checking the work of Government', https://www.parliament.uk/about/how/role/scrutiny/
[278] BBC News, 'Coronavirus: Ministers treating Parliament with 'contempt,' says Speaker Hoyle', https://www.bbc.co.uk/news/uk-politics-54352765

Speaking on how the government had exercised its powers to make secondary legislation during the pandemic, the Speaker of the House of Commons, Sir Lindsay Hoyle called it 'unsatisfactory', noting:

> 'All too often important statutory instruments have been published a matter of hours before they come into force and some explanations as to why important measures have come into effect before they can be laid before this House has been unconvincing and shows a total disregard for the House.'

He added that he was 'now looking to the government to rebuild trust with the House not treat it with the contempt it has shown'.[279]

In an article for *The Telegraph* during that period, the backbench MP and former minister Steve Baker highlighted that due to the Covid-19 pandemic there have been 100 Acts of Parliament which have enabled 242 SIs related to the disease.[280] However, as the Covid position was not as catastrophic as feared at that stage, Baker contends 'It is no longer appropriate to curtail our freedoms by ministerial decree with only retrospective approval by Parliament, often after rules have been amended or repealed'. Therefore, Parliament needed to take back control.

The group of rebel MPs – in the form of the CRG – was confident there would be enough support to force through an amendment that would mean all future lockdown measures would face a vote in the House of Commons.[281] Baker called the way things have been done regarding the measures in the pandemic a 'nonsense', and stated that their proposed amendment would ensure MPs have a chance to vote on government policy 'before it comes into force and takes away people's civil liberties.'

The proposition that parliament itself – and by extension, the public – had become sidelined during the making of Covid policy formed part of a regular dialogue.[282] As pointed out by academic researchers at UCL, Professor Meg Russell and Lisa James, Conservative MPs' anxieties over the handling of the crisis, and in bypassing parliamentary scrutiny, had become increasingly evident. Charles Walker accused the government of treating backbenchers like 'dogs'; and over 40-50 Conservative MPs had signed the amendment proposed by Graham Brady which would have made the continuation of ministerial powers conditional on MPs getting the vote on all future coronavirus-related restrictions. They found the most frequent criticism had been on the government's use of delegated legislation – with a series of

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[279] BBC News, 'Coronavirus: Ministers treating Parliament with 'contempt,' says Speaker Hoyle', https://www.bbc.co.uk/news/uk-politics-54352765

[280] Steve Baker, 'Parliament must take back control of Covid laws', https://www.telegraph.co.uk/news/2020/09/26/parliament-must-take-back-control-covid-laws/

[281] Global Health Security Team, 'Government faces 'certain' defeat on Coronavirus Act, says Steve Baker', https://www.telegraph.co.uk/global-health/science-and-disease/coronavirus-test-trace-lockdown-universities-students-superspreader/

[282] Meg Russell and Lisa James, 'MPs are right. Parliament has been sidelined', https://constitution-unit.com/2020/09/28/mps-are-right-parliament-has-been-sidelined/

coronavirus restrictions being imposed through regulations without adequate parliamentary oversight. To top it all, debate was often scheduled some considerable time after the restrictions themselves were announced or came into force.[283]

In their conclusions, the UCL Constitution Unit researchers find that whilst arguments might be made for foregoing detailed parliamentary accountability in favour of an emergency response at the beginning of the pandemic, this argument no longer had clear meaning when parliament became fully operational and able to conduct scrutiny. This point must surely be reiterated because at least after 10 May 2020, when government was announcing plans to come out of the first lockdown – parliament should have been returned to its rightful place in debating and amending ministerial plans brought before it. The biproduct of ministerial manoeuvres is that politicians and Whitehall quietly advocated a self-destruction of the constitutional powers of parliament in favour of the unwieldiness of government.

It would be far better if we looked to our public and parliamentary politics, not to technocratic adjudication by an unelected bureaucracy, for our regular model of producing and resolving public health policies. The reason for this is that the laws and policies in a democracy can only be said to be legitimate to the extent that they are publicly justifiable to the individuals within that society.[284] They are justifiable to all members of the public – including all restriction-enthusiasts as well as restriction-sceptics – on the basis that the policies result from a reasonable debate among equals. Political authority, more broadly, can only be said to exist precariously where it can't be justified to each person it claims to bind, even among those who are mistaken[285] – from the scientists who defended restrictions based on their models over the weeks and months when the evidence was shifting against their estimates, through to vaccine critics who denied some of the most obvious and fundamental aspects of how the disease would be transmitted. There is one significant element of maintaining democracy which therefore relies on each person engaging in a process of free argument, scrutiny and deliberation, and each being able to contribute towards that process. The equality of the contribution they can make to a decision-making process in a democracy is especially important in cases of disagreement.

The politics of the tea-room and the need to 'fight back'

The traditional decision-making power of Parliament defines a Westminster model of MPs taking ultimate political decisions over policy and laws on behalf of the electorate, whose

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[283] Meg Russell and Lisa James, 'MPs are right. Parliament has been sidelined', https://constitution-unit.com/2020/09/28/mps-are-right-parliament-has-been-sidelined/
[284] Jim McConalogue, *Rebalancing the British Constitution: The future for human rights law*, p. 118 in an interpretation of Jeremy Waldron's arguments.
[285] Jim McConalogue, *Rebalancing the British Constitution: The future for human rights law*, p. 118.

interests and concerns they seek to represent. The formation of executive-led Covid-regulation has over time led to an erosion of Parliament's regulating of the executive, albeit the Covid Recovery Group of MPs fought back on the Brady amendment in the autumn of 2020. The end result is that this process has nonetheless generated a broad executive-legislature accountability gap, an erosion of parliamentary accountability over the executive branch.[286]

As the government takes an almost singular lead, without parliamentary scrutiny and functions taken into account, we are faced with a drastic asymmetry that develops between the executive and the legislature. The older historical precedents of Montesquieu's (1748) 'power checks power' English constitution, in which primarily the executive and the two branches of the legislative act as checks on one another, become anachronisms. We talk of a parliamentary government when, in fact, much of the content of law is being authorised through regulation decided by ministerial decree.

One of the distinct limitations placed on MPs to debate has been directly through the hybrid 'pre-published call lists' which were necessarily imposed on debates for motions and on legislation. The Procedure Committee in the House of Commons was clear that the restrictions imposed on access to the Chamber during 2020 'run counter to the House's practice and affect the operation of a fundamental procedural principle: that every Member has an equal right to be present in the Chamber'.[287] They expected the House authorities and business managers to bear this in mind in the decisions they make about the future conduct of House business. Some of this evaluation had developed around the MPs' 'call lists' which were pre-prepared for each separate proceeding for which they are required on each sitting day, compiled into a single paper.[288]

When the Procedure Committee conducted a survey as part of a short sub-inquiry into how present coronavirus restrictions are affecting participation in debate on motions and on legislation in the Chamber,[289] they were able to gain the views of MPs (below) on the use of pre-published call lists for debates on motions and on legislations.

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[286] To compare the similarities with the EU integration process, see Jim McConalogue's earlier book, *The British Constitution Resettled*: *Parliamentary Sovereignty Before and After Brexit,* Palgrave Macmillan, pp. 121-122.
[287] Procedure Committee, 'Procedure under coronavirus restrictions: call lists and time limits on speeches in debates',
https://publications.parliament.uk/pa/cm5801/cmselect/cmproced/1031/103105.htm#_idTextAnchor008
[288] Procedure Committee, 'Procedure under coronavirus restrictions: call lists and time limits on speeches in debates',
https://publications.parliament.uk/pa/cm5801/cmselect/cmproced/1031/103105.htm#_idTextAnchor008
[289] Annex 3: Online survey of Members conducted between 14 and 18 October 2020.

Procedure Committee: 'What is your view on the use of pre-published call lists for debates on motions and on legislation?'[290]

A call list gives me certainty about when I will be called in a debate	86 (76% of respondents)
Call lists are necessary at present, but should not be used for longer than is required	34 (31%)
Call lists reduce spontaneity in debate	49 (43%)
Call lists encourage Members to apply for too many debates	20 (18%)
Other [please indicate]	22

Several key observations were notable in the circumstances: the call list gave certainty about when MPs were to be called in a debate at that time in October 2020, but it was well noted that they reduced spontaneity in debate and should not be used for longer than is required. Although some favoured the system, the comments by MPs on the 'call list' system reflect a range of concerns:

- *'Call lists are a good idea. When we can return to full occupancy of the chamber there's no reason to think they will reduce spontaneity in debate. I think they should continue'*

- *'Call lists are helpful, but should be produced earlier than they are currently'*

- *'Call lists are too long and don't guarantee I will be called even if on them'*

- *'Call lists reduce my ability to raise matters important to my constituents'*

- *'Call lists destroy the quality of the speakers in a debate which the Speaker would usually 'curate' based upon relevant experience'*

- *'Call lists discourage attendance in the Chamber (OK for now, but not long term) which means contributions are far less fluid and spontaneous. Members should be in the Chamber listening and engaging in a debate, not just turning up for their spot and leaving'*

- *'I am never high on a call list and often get squeezed out'*

- *'I can't speak in debates but call lists are helpful for Uqs and Statements'*

- *'I have missed out on many debates due to call lists'*

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[290] Procedure Committee, 'Procedure under coronavirus restrictions: call lists and time limits on speeches in debates', https://publications.parliament.uk/pa/cm5801/cmselect/cmproced/1031/103112.htm (Contains Parliamentary information licensed under the Open Parliament Licence v3.0).

- *'I like them. I think [the system] enables MPs to make more efficient use of our time. I would like us to continue with them even when we return to 'normal''*

- *'They prevent interventions on important issues by 'bobbing''*

- *'They make it far too easy for Ministers'*

- *'They prevent members walking into the Chamber ad hoc'*

- *'While there needs to be some spontaneity in Parliament, sitting in the Chamber all day hoping one might be called to participate in a debate is bad use of time. I believe call lists for debates are a good idea, but less so for Question Time when the Chamber should be full.'[291]*

The removal of spontaneity in the chamber, an empowerment of ministers, alongside a concern for MPs being shut out of debates and discouraging attendance in debates, was at the core of MP reservations for such a system.

Faced with the position of an unwieldy executive and a diminished legislature, whereby Covid itself and the hybrid arrangements weakened the legislature's ability to scrutinise the executive, it is really only the MPs from different political parties which are able to rekindle a constitutional relationship between the executive and parliament. Through the organised coordination and independence of party backbencher positions adopted in the parliamentary chamber, opposition MPs and those working in tandem with the government's majority backbench MPs are in a position to reorient policy, to amend the plans of the executive in line with the wishes of MPs in parliament.

The ability for legislators to 'fight back' against government through informal networks is at the centre of parliamentary life. Although there will be competing arguments as to the utility of a hybrid approach in parliament during a public emergency – in which MPs were, for long periods, not required to be in the chamber and operated in debates from afar through remote screen-facing technologies – it should not be conceded that this was, should have been, or should be for the future, an acceptable arrangement. Hybrid arrangements were at the forefront of why parliament did not work effectively.

According to Lord Norton, writing in a piece for *The Norton View,* 'It is impossible to fully appreciate parliamentary activity without reference to members mixing informally' because 'What happens in formal proceedings – in the chamber and committee rooms – may be shaped by members meeting informally to discuss action and swap information.' [292] And whilst that informal mixing of members is a common feature of parliamentary life which is not always

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[291] Procedure Committee, 'Procedure under coronavirus restrictions: call lists and time limits on speeches in debates', https://publications.parliament.uk/pa/cm5801/cmselect/cmproced/1031/103112.htm

[292] Lord Norton, 'Problems of a hybrid House', https://nortonview.wordpress.com/2020/11/14/problems-of-a-hybrid-house-2/

apparent to those outside Parliament, it is an activity which many MPs and peers are acutely aware of.

Many commentators are dismissive of the role of tea-room politics, but without it, in the age of Covid, very little collaborative scrutiny gets done. As pointed out by Lord Norton, particularly during a time of crisis, members may meet informally to discuss and consider what they should do. These informal, sometimes unplanned, meetings between members can 'result in a member gleaning information that transforms their plans', can become 'a significant learning experience', and can allow members to 'talk – and plot – away from the prying ears of ministers and whips.' Ultimately, for Norton, it was difficult to 'understate the serendipity of informal contact' since the 'chance encounter can prove the catalyst for notable action.'[293]

During the coronavirus pandemic, we know that the House of Commons moved to meeting in a hybrid form. Throughout some periods, most MPs were made to operate away from Westminster, with only 30 members allowed in the chamber at any one time, and even then, they were asked to remain socially distanced. Norton accepts the system has its benefits, such as strengthening the position of the party leadership. But it also means that informal contact is either limited or non-existent. It means there is no opportunity for a passing conversation for those sat on the same benches or between MPs and peers.

Where emergency Covid-regulation procedures have lessened the ability of parliament to regulate the executive, an unfortunate consequence is that executives are provided with a hidden policy space, kept far away from parliamentary scrutiny. The executive – combining minsters, SAGE advisers, SpAds and public health agencies – held on tightly and secretively to a near monopoly on advice and information in a public policy space which would define the path they thought was in the national interest. That does not mean parliament cannot itself now fight back after the pandemic – both through inquiries and debates – to explain the failures and weaknesses of top-down, executive-led policies and actions before parliament. The necessary driving force is the MPs – it is they who are elected (and removable) and who have the power to redress both the accountability gap and sustained grievances between governing elites and the parliamentary rank-and-file in holding the government to account. Backbench MPs and their often powerful select committees do have substantial power to induce the Secretaries of State, or Prime Minister, to act as a representative of the electorate, or to act via the guiding recommendations of a parliamentary committee. In Westminster, MPs and peers can, by clubbing together, articulate policy views to informally require ministers to reorient or amend policy.[294]

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[293] Lord Norton, 'Problems of a hybrid House', https://nortonview.wordpress.com/2020/11/14/problems-of-a-hybrid-house-2/

[294] Jim McConalogue, *The British Constitution Resettled: Parliamentary Sovereignty Before and After Brexit*, Palgrave Macmillan.

Parliamentary power and the means to amend Covid planning

That MPs felt unable to effectively amend Covid-19 legislation was observable on a daily basis, particularly where restrictions were drastic, in blanket form, or issued without helpful guidance. In terms of the marginalisation of Parliament during the pandemic, the Public Administration select committee expressed concern over 'both the scale of legislation and the inability of Parliamentarians to effectively amend COVID-19 legislation.'[295] As noted by the Committee, the scale of legislation, covering a large number of SIs made under multiple sources, made it very difficult for even experts to follow what legislation was in force. MPs had no mechanism to amend this legislation which is being made under SI.[296] As all stages of the Bill for the Coronavirus Act were taken through the House of Commons in one sitting day, it meant MPs only had only one day to influence and amend the Act. It was clear MPs were given no opportunity to 'meaningfully engage' with or 'amend the lockdown regulations' under the Public Health (Control of Diseases) Act 1984.

According to the report by the Public Administration and Constitutional Affairs Committee (PACAC), that system of parliamentary scrutiny over lockdown regulations was not satisfactory. The fact that legislation containing:

> 'stark restrictions on people's civil liberties, is not amendable by Members, made under the urgent procedure and therefore without parliamentary scrutiny or effective oversight, coupled with the extremely quick passing of the Coronavirus Act means the framework Parliamentary scrutiny of the Government's handling of COVID-19 is inadequate'.[297]

The Committee highlight that parliamentary processes and debates would not only 'help to confer legitimacy upon policy changes made through emergency legislation,' but that such debates also provide MPs with opportunities to address problems which exist in the legislation or guidance. The Committee went on to recommend the Government give a 'higher priority to facilitating parliamentary scrutiny of such legislation in future.'[298]

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[295] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19',
https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/377/37708.htm#_idTextAnchor056
[296] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19',
https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/377/37708.htm#_idTextAnchor056
[297] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/377/37708.htm
[298] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/377/37708.htm

Even the commitments made by ministers to parliament at several stages on the highly restrictive terms of the Coronavirus Act were as weak as to be rendered meaningless. On the six-monthly parliamentary review, MPs were promised 'to debate the relevant temporary provisions within the Coronavirus Act 2020', but it did not 'allow the House to individually vote on whether specific provisions should continue or be repealed.' Therefore, the Committee argued for the review to be 'supported by more regular thematic debates… on provisions within the Coronavirus Act to provide the House with an opportunity to consider specific provision in greater detail.' This would enable amendments to be made 'and for the House to express a clear view.' Nor was enough detail being given to parliament to enable scrutiny. As the Committee recommended for the government's two-monthly reports, the Government needed to include 'evidence-based arguments for why the provisions continue to be necessary', as well as quantitative evidence demonstrating the impact of their usage, albeit the government later claimed in response to 'have built upon our two-month reports to Parliament'.[299]

A secondary impact on parliament's inability to scrutinise and amend is that those who might have been expected to take an oppositional or critical stance simply did not. In short, a culture within parliament has been set up with varying degrees of restriction-enthusiasm. Those who were sceptical of the government's restrictions and the potential impact on their livelihood would have strictly had no parliamentary representation. The Opposition is central to holding the government to account in Parliament. Given that the Labour Party, as the largest non-government party in the House of Commons, is the Official Opposition, its leader, Keir Starmer, was expected to take the lead role in questioning the Prime Minister when they came to Parliament. They too have their own Shadow Cabinet, each of whom takes the lead in questioning other Government ministers when they come to Parliament.[300]

When Keir Starmer was elected leader of the Labour Party in April 2020, he committed to an approach of 'constructive opposition' during the pandemic. He reiterated that approach again in August 2020. For Starmer, the results of his approach were found to be 'at best mixed' by two researchers – Farah Hussain and Karl Pike – at Queen Mary University of London.[301] Among the public, the largest group of people (35 per cent) believed that he has done either a fairly or very bad job at 'constructive opposition'; 29 per cent thought that he was doing neither a good nor bad job; while 27 per cent thought that he is doing either a fairly good or very good job.

[299] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19: Government Response to the Committee's Fourth Report of Session 2019–21', https://committees.parliament.uk/publications/3885/documents/38918/default/
[300] UK Parliament, 'Parliament and the Government', https://www.parliament.uk/about/how/role/relations-with-other-institutions/parliament-government/
[301] Farah Hussain and Karl Pike, 'Public perceptions of Keir Starmer's performance suggest he has yet to produce a clear narrative of both the COVID-19 crisis and his leadership', https://blogs.lse.ac.uk/politicsandpolicy/starmer-dilemma/

They found, from the perceptions of the public, that Starmer was yet to produce a clear narrative of both the crisis and his leadership. They also acknowledge that it may be particularly difficult to argue that the pandemic should have proven an electoral breakthrough moment for Labour.

There are two fair conclusions that flow from this observation. First, the mainstream opposition engaged in a style of 'constructive opposition' during the pandemic but not along lines that the public might have expected. And second, in opposition to the Conservative party in government of restriction-creators and restriction-enthusiasts stood an opposition party which offered an even greater restriction-enthusiast position. That is to say, prior to the arrival of the CRG MPs, led by Steve Baker, Graham Brady, Iain Duncan Smith and Mark Harper among others (paradoxically, from the governing party), very little parliamentary opposition-style argument arose at all from a restriction-sceptical view. When Keir Starmer's campaign trip was disrupted by the landlord of a pub who angrily shouted at him over his support for the government's coronavirus restrictions,[302] the public dispute made the point clear. There was no early parliamentary representation for even the slightest sceptic of restrictions, albeit eventually the CRG MPs in late 2020 gained some parliamentary success in obtaining votes on Covid-regulations, which the government had otherwise sought to avoid.

MP and peer calls for the freedom to scrutinise

The MPs' desperate need for involvement had been felt at several key junctures. On 19 December 2020, when the government considered that a rapid spread of Covid-19 was being driven by a new variant, leading them to announce new Tier 4 restrictions the following day, it became clear that the Christmas plans for a relaxation of the rules could not continue as planned. After Boris Johnson announced that areas of the South East would be entering a new Tier 4 and that the Christmas 'bubble' policy would apply to Christmas day only for the rest of the country, Mark Harper (Chairman of the CRG) called for Parliament to be recalled in order to allow MPs to debate and vote on the changes.

The point on authorisation made by Mark Harper was that the Christmas household rules were explicitly approved by the House of Commons, so it was 'only right' that, if the Government were to seek to change them – as they did at that point – then it should also have been approved by a vote in the House of Commons in advance. In short, parliament should not be bypassed. He also added that if the Government wanted the support of the public and Parliament, it needed to publish a 'clear exit strategy from this nightmarish, cycle of damaging

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[302] Peter Walker, 'Pub landlord shouts at Starmer for backing Covid rules',
https://www.theguardian.com/politics/2021/apr/19/pub-landlord-shouts-at-starmer-for-backing-covid-rules

lockdowns and restrictions'.[303] Neither a vote nor an exit strategy were made available at that stage, illustrating that government was at odds with parliamentary involvement in decision-making.

It is notable from earlier contributions in debates on Covid-19 in September 2020 that it was becoming increasingly necessary and urgent for parliament to become involved. The MP Lucy Allan acknowledged that although it was right to grant the government with emergency powers at the beginning of the pandemic, it was now necessary to involve MPs in this process in a different way from that which had happened previously. She claimed that whilst MPs 'may not be experts in science', they are 'experts' in the people they represent. Therefore, she asked for ministers to allow MPs to bring that knowledge and expertise to bear to aid decision-making.[304]

Allan then favoured a path of moving away from lockdowns towards a long-term strategy to deal with the virus. In order to do this, she stressed that 'We need to understand risk and probability, and that robust, evidence-based data really matters.' Allan was particularly critical of the previous data used by the scientists, saying:

> 'It is very uncomfortable being frightened to death by scientists presenting charts to the nation that they must know are wrong; that chart last Monday undermined public trust, as it was quite clearly pushing a worst-case scenario without telling us the probability of such a scenario occurring. Was it designed to instil fear in order to control the public? Is that how we want to govern?'[305]

Speeches by MPs were peppered with critical rebuttals as to why they were unable to question incorrect data assumptions (at the right time), or question powers of the police to use 'reasonable force' in the regulations. Mark Harper argued for the importance of MPs being able to scrutinise the government at this stage. For instance, Harper points to the chief scientific adviser, Sir Patrick Vallance, saying in a press conference during the previous week in September that 'he thought that the epidemic was doubling roughly every seven days.' But the next day, the Prime Minister told the House that, 'the day before, the chief scientific adviser and the chief medical officer had said that the doubling rate was somewhere between seven

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[303] Rachel Russell, 'Tory REVOLT: Demands for Boris to let MPs have urgent vote on new lockdown', https://www.express.co.uk/news/uk/1374623/Lockdown-news-tier-4-rules-coronavirus-boris-johnson-covid-restrictions-christmas-vote

[304] Covid-19 debate, Volume 681: debated on Monday 28 September 2020, https://hansard.parliament.uk/commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19

[305] Covid-19 debate, Volume 681: debated on Monday 28 September 2020, https://hansard.parliament.uk/commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19

and 20 days.' Therefore, Harper argued, ministers should be made to come to the House so MPs could interrogate them on the evidence and understand the efficacy of the solutions.[306]

The second reason Harper believed MPs should be able to scrutinise the government was based on the seriousness of the regulations. Harper highlights that MPs were not able to ask ministers important questions on the regulations that came into force the night before the debate was held and which contained serious powers. For instance, there were measures (at that stage) that gave the power of using 'reasonable force' to enforce self-isolation not just to police officers and police and community support officers, but to any individual appointed by the Secretary of State and also to employees of local authorities. Harper contends MPs should have been able to ask questions such as who is able to use reasonable force and what kind of training they had to undergo in order to use it in a safe manner.[307]

Some MPs were suspicious of 'mission creep' and attempts by government to make regulations permanent. In that debate in September 2020, Sir Christopher Chope said he was 'not yet persuaded' that he needed 'to support the continuation of the Coronavirus Act… Because the Government are guilty of covert mission creep.' He pointed to the legislation which was rushed through at the beginning of the pandemic to prevent the NHS from being overwhelmed. Yet, despite the original objective being achieved, the government are saying, 'Oh, we need to keep it just in case.' And although Chope proposed that if the Government were going to keep the regulations, it should be on the basis that there were proper regulatory impact assessments for them, they still did not have the assessments,[308] Chope's point on impact assessments were to become even more pertinent: how else were MPs going to be able to place policy-making on a rational footing? So long after the early months of the pandemic, the government needed to understand the impact, the costs and benefits of the policies they executed.[309]

It was not only MPs in the House of Commons that had suffered this marginalisation, but also peers in the House of Lords. In May 2021, the House of Lords Select Committee on the

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[306] Covid-19 Volume 681: debated on Monday 28 September 2020, https://hansard.parliament.uk/commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19
[307] Covid-19 Volume 681: debated on Monday 28 September 2020, https://hansard.parliament.uk/commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19
[308] 'Covid-19 Volume 681: debated on Monday 28 September 2020', https://hansard.parliament.uk/Commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19
[309] Covid-19 Volume 681: debated on Monday 28 September 2020, https://hansard.parliament.uk/commons/2020-09-28/debates/D4275E96-C0FB-49CA-8031-E8B3F4C8B680/Covid-19

Constitution published their *COVID-19 and Parliament* report.[310] Even prior to the publication of this report, the Committee drew attention to

> '…the difficulties facing Parliament, in particular the House of Lords, in fulfilling its constitutional responsibilities of holding the Government to account and scrutinising legislation adequately.'

And now, Parliament itself 'is under increased scrutiny about the way it works.'[311] The Covid-19 pandemic, they concluded, resulted in 'a significant challenge for the operation of Parliament, including its ability to continue meeting to carry out its constitutional functions.' In the early stages of the pandemic, between March and June 2020, the House of Lords moved from physical to virtual to hybrid proceedings. This not only potentially increased public scepticism of Parliament's role, but it also meant that when Government used a variety of emergency powers, Parliament's ability to scrutinise those important powers were limited by the time constraints and physical restrictions introduced in response to the pandemic.[312]

The inability of ministers to announce key policies to parliament became a feature of the Covid political landscape. Not only should government first make significant policy announcements to Parliament – a defining feature of the Ministerial Code – but the Committee also expressed concern for the way in which the government had laid a high volume of SIs in response to the pandemic. By the end of the 2019-21 session, 424 Coronavirus-related SIs had been laid before Parliament since January 2020. This high volume, alongside the use of fast-track procedures, meant that parliament's ability to scrutinise significant powers was 'severely limited'.[313]

The quality of responses in the Lords also suffered. The Committee acknowledged the challenges faced by the Government in responding to the increased number of questions for written answer during the pandemic, but said this did not justify poor, partial or non-answers. They thought the Government should ensure that departments were able to respond fully to questions, including by providing relevant information and in a timely manner. It was central to ministers' accountability to Parliament, they suggested.[314]

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[310] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[311] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[312] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[313] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[314] Select Committee on the Constitution, 'COVID-19 and Parliament', https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf

In line with Lord Norton's view (detailed on p.108 above), the Committee found that as the House of Lords also moved to hybrid proceedings, this change, particularly the loss of spontaneity in members' interactions during debates, has resulted in Parliament's essential scrutiny role becoming less effective, including its capacity to hold the Government to account. This presented significant difficulties for both members and ministers.[315]

Moreover, as with the Commons, the amount of time backbenchers in the House of Lords had to speak was also an issue, with speaking times of only one or two minutes sometimes allowed. The Constitution Committee indicated that hybrid proceedings had amplified underlying pre-pandemic issues, including occasions when peers who had significant expertise were not being given the opportunity to make a contribution. This does 'not allow members to make a meaningful contribution', they found.[316]

The Committee also went on to express concern for the risk that the House of Lords might either revert to its pre-Covid-19 procedures, with all the difficulties they identified, or that some of the temporary changes introduced in response to the pandemic will become permanent. They were cautious that the House of Lords should reflect on its experiences during the pandemic and to consider how it could fulfil its role more effectively once things returned to 'normal'.[317]

If we are to genuinely resuscitate democratic and parliamentary accountability, more must be done from within parliamentary procedures to enable MPs to debate and vote on issues of vital national interest, even when the government is desperate to move forward with their own law or policy. This principle may now need to be rectified to ensure power flows properly to the MPs.

It was apparent from the Covid-19 regulations that there was a complete lack of consultation regarding national restrictions, which led to the fight back in the House of Commons in the form of the 'Brady amendment' in September 2020. It was brought forward by the chair of the Conservative backbench 1922 Committee (Sir Graham Brady MP) and signed by over 50 Conservative MPs at that time. The amendment requested that parliamentary votes should in future be held before the introduction of new UK- or England-wide measures. While some say it could also have been addressed using non-government time, the realities of those powers

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[315] Select Committee on the Constitution, 'COVID-19 and Parliament',
https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[316] Select Committee on the Constitution, 'COVID-19 and Parliament',
https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf
[317] Select Committee on the Constitution, 'COVID-19 and Parliament',
https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/4/4.pdf

mean it would have been subject to the government wishing to make such time available. An unlikely event.

So, after the discussions that followed the Brady amendment, we might concede that subsequent 'lockdown' regulations were debated and voted upon on 4 November and 1 December, although the creation of 'Tier 4' later in December was not put to MPs. As Professor Meg Russell and Dr. Daniel Glover propose, the degree of government control over the timing of non-government days therefore needs rectifying,[318] since the power of the Commons seems to ebb and flow in this regard. This challenge could be solved, as Russell and Glover propose in one of their several reforms, by moving to a fortnightly or monthly allocation of opposition and backbench times (and not by session). That would mean a change which could allow for some transfer of power to MPs to make decisions, at least those that should have applied to Covid regulations.

The Hybrid Problem and the curtailing of the ability to scrutinise

The acceptance of hybrid arrangements by MPs and peers imposed a numerical list on MPs and peers able to participate both in person and remotely. We have discussed some of those main hybrid arrangements and their impacts throughout this chapter (from p. 105). Under the hybrid arrangements enforced for much of the pandemic, inside the House of Commons, of the 650 MPs, only a maximum of 64 MPs were permitted in the House of Commons Chamber at any one time[319] to enable social distancing. To allow the business of the House to continue, a hybrid approach was adopted so that not all MPs were required to be in the chamber. This hybrid approach applied to ministerial statements, primary legislation, secondary legislation, general debates and oral questions. For oral questions, only 50 MPs were permitted to be in the chamber, and a further 120 MPs were able to participate virtually.[320]

In the House of Lords, on 4 June 2020, it was agreed that from 8 June there would no longer be separate physical and virtual proceedings. Instead, physical and remote participation would be

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[318] Meg Russell and Daniel Glover, 'Taking back control: Why the House of Commons should govern its own time', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/190_taking_back_control_-_why_the_house_of_commons_should_govern_its_own_time_final_report_110121.pdf

[319] UK Parliament, 'COVID-19 proceedings in the Commons Chamber', https://www.parliament.uk/about/how/covid-19-proceedings-in-the-house-of-commons/chamber-proceedings/

[320] Dr Alice Lilly and Dr Hannah White, 'Parliament's role in the coronavirus crisis: Holding the government to account', https://www.instituteforgovernment.org.uk/sites/default/files/publications/parliament-role-coronavirus-crisis-holding-government-account_0.pdf

allowed for an item of business. To allow for social distancing, it was decided that no more than 30 members could take part from the chamber at any one time.[321]

Temporary arrangements had been in place in the House of Commons up to 22 July 2021 to ensure that proceedings in the House of Commons complied with public health guidelines and that social distancing measures were in place, but those arrangements effectively changed substantively on 19 occasions.[322] This fact again was central to parliament's inability to operate sufficiently well to offer full scrutiny. An early report for the UCL Constitution Unit explored the effects of the Covid-19 pandemic on Parliament which, as noted in the report, have been 'substantial'.[323] It not only looked into how House of Commons select committees began having their meetings virtually during the Easter recess, but that when MPs returned on 21 April 2021, Jacob Rees-Mogg (Leader of the House of Commons) proposed a motion which would allow proceedings to be 'hybrid', which then changed again on 20 May as hybrid proceedings lapsed ahead of Whitsun recess.

Should we feel particularly aggrieved at the state of parliamentary debate during the pandemic? Parliament was faced with a problematic structure of recess periods, and as Lord Sumption emphasised, MPs were not sitting at some crucial points in which the regulations were being introduced.[324]

What did a search of the parliamentary records reveal about the attention paid by MPs to key 'lockdown' events?

If we look at the table below recording some the most basic searches of the *Hansard* record – as a record of what is said and done in both Houses of Parliament – we can see some asymmetries between the number of times 'Covid' is referred to in parliament in relation to specific events. Although the record is very approximate,[325] the number of times that 'Covid' was referred to in parliament within -/+ five days of lockdown being announced (23 March 2020) stood at around 205 debate references, 19 debate titles and six written statements.

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[321] House of Lords Library, 'House of Lords: timeline of response to Covid-19 pandemic', https://lordslibrary.parliament.uk/house-of-lords-timeline-of-response-to-covid-19-pandemic/
[322] UK Parliament, 'COVID-19 proceedings: Timeline of temporary arrangements', https://www.parliament.uk/about/how/covid-19-proceedings-in-the-house-of-commons/covid-19-proceedings-timeline-of-temporary-arrangements/
[323] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf
[324] Jonathan Sumption, ''This is how freedom dies': The folly of Britain's coercive Covid strategy', https://www.spectator.co.uk/article/-this-is-how-freedom-dies-the-folly-of-britain-s-coercive-covid-strategy
[325] It is approximate because some would have mentioned coronavirus or as would be common, MPs or peers may talk in a debate on Covid that did not mention the virus at all.

Given the seismic intervention of going into that initial unprecedented lockdown of society, it did not begin to mirror even half the number of times 'Covid' was then subsequently referenced in parliament within -/+ five days of the PM announcing a plan for lifting lockdown (10 May 2020): with 554 debate references, 61 debate titles and eight written statements. Whilst the greatest number of times 'Covid' is referred to in parliament in the spread of examples below was when the UK's first local lockdown came into force in Leicester (4 July 2020), many would suggest that this would arguably be less relevant than a debate relating to national lockdown. Again, contrast this with the number of times 'Covid' is referred to in parliament within -/+ five days of England entering third national lockdown (6 January 2021), with less debating references and debate titles devoted to it: 243 debate references, nine debate titles and seven written statements.

Number of times 'Covid' is referred to in parliament within -/+ 5 days of lockdown-related events

	Debate references	Debate titles	Written statements
Number of times 'Covid' is referred to in parliament within -/+ 5 days of lockdown being announced (23 March 2020)	205	19	6
Number of times 'Covid' is referred to in parliament within -/+ 5 days of PM announcing a plan for lifting lockdown (10 May)	554	61	8
Number of times 'Covid' is referred to in parliament within -/+ 5 days of UK's first local lockdown coming into force in Leicester (4 July)	720	57	18
Number of times 'Covid' is referred to in parliament within -/+ 5 days of three-tier system of Covid-19 restrictions	596	40	11

starting in England (14 October)			
Number of times 'Covid' is referred to in parliament within -/+ 5 days of second national lockdown coming into force in England (5 November)	610	48	8
Number of times 'Covid' is referred to in parliament within -/+ 5 days of England entering third national lockdown (6 January 2021)	243	9	7

Source: https://hansard.parliament.uk/

The excessive role of Statutory Instruments (SIs) in law-making

The excessive dependence on SIs has highlighted not only the absence of parliamentary involvement but the setting aside of scrutiny and real, rather than nominal, democratic approval. An early report for the UCL Constitution Unit noted that major changes instituted following the lockdown were made by SI, which notably received less parliamentary scrutiny.[326] Both the 'volume and far-reaching nature' of the SIs has emphasised just 'how much law the government can pass without parliamentary approval.' Additionally, the report suggests that the government occasionally 'appeared to make unnecessary use of the flexibility afforded by delegated legislation.' For instance, at that stage, it was pointed out that 81 of the 97 'made negative' Covid-related SIs 'breached the convention that they be laid 21 days before coming into force.'[327]

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[326] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf

[327] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf

Statutory Instruments and the avoidance of parliament

A brief analysis can show how far this pattern of law-making by avoidance of parliament went on to help achieve ministers' goals. By August 2021, the Hansard Society reports that the government had laid some 483 Coronavirus-related SIs before Parliament.[328] It is worth following their systematic breakdown of these instruments since it shows that:

- 71 per cent of them (345) are subject to the 'made negative' procedure, which means that the SI is laid before Parliament after it has been signed into law by the minister but 'may be annulled if a motion is passed by either House within 40 days of it being laid before Parliament'.
- 22 per cent of them (105) are subject to the 'made affirmative' procedure, which means that the SI is laid before Parliament after it has been signed into law by the minister but 'cannot remain law unless it is approved by the House of Commons and in most cases also the House of Lords within a statutory period – usually 28 or 40 days'.
- Only 6.4 per cent (31) are subject to the 'draft affirmative' procedure, meaning that the SI is laid before Parliament as a draft 'and cannot be made into law by the minister unless and until it has been approved by the House of Commons and in most cases also the House of Lords'.
- Two are 'laid only,' meaning that the SI is laid before Parliament but no further procedure is necessary or possible.[329]

This means that many instruments are being laid before parliament after it has already been signed into law by the minister and have come into force, but are then subject to some later parliamentary procedure. This demonstrates public accountability or parliamentary scrutiny can be initially avoided for much of the high impact and expensive policies pursued by the government to manage the Covid crisis.

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[328] Hansard Society, 'Coronavirus Statutory Instruments Dashboard', https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard
[329] Hansard Society, 'Coronavirus Statutory Instruments Dashboard', https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard

During the coronavirus pandemic, there has been a 'high volume' of SIs. As such, the government has faced criticism – with Baroness Smith calling the amount of SIs 'unacceptable', and others saying that the volume of SIs which were introduced by the Government in response to Covid-19 made it difficult for Parliament to effectively perform its scrutinising function.[330]

The significance is not necessarily of the quantity of SIs but the broad and national qualitative impacts of Covid-related regulations on the regular lives of citizens and the rule of law (see the table below). After all, as of 6 August 2021, the government had laid 1,546 SIs before Parliament since the week commencing 27 January 2020. Of these, 478 were coronavirus-related, with many having been laid since 6 March 2020, at an average rate of six per completed week.[331] In contrast, prior to the pandemic (1950-2019) there was an average of 2,500 SIs issued each year, although this has varied over this time period. An average of 2,100 UK SIs were issued annually from the 1950s to around 1990. This then rose to an annual average of 3,200 in the 1990s, 4,200 in the 2000s, and fell to around 3,000 a year on average during the 2010s (to June 2019).[332] For the 2017-2019 period, the number of SIs laid 'was higher than the two preceding sessions, with an average of 5.7 SIs laid per sitting day during the 2017–19 session, up from 4.8 in 2015–16 and 5.1 in 2016–17. This was slightly lower than during the last two-year session (2010–2012), during which 6.2 SIs were laid per sitting day.'[333] In 2018 alone there were 1,423 UK SIs issued.[334] The issue might be understood as being less about the number of instruments, but about the type and extent of those highly-impactful instruments which are replacing regular legislation on major issues.

Many of those Coronavirus-related SIs were complex. For example, the Health Protection (Coronavirus, International Travel) (England) Regulations continued to amend the list of quarantine-exempt countries into England, plus amending the list of 'red-list countries'. It was amended over 50 times, before being replaced by the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 on 14 May, which was amended within three days, starting a new series of amending SIs. At the end of October 2020, when England entered a second lockdown, the SI (the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020)) revoked the existing three sets of initial 'tier'

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[330] Select Committee on the Constitution, 'COVID-19 and Parliament',
https://committees.parliament.uk/publications/5799/documents/66400/default/
[331] Hansard Society, 'Coronavirus Statutory Instruments Dashboard',
https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#total-coronavirus-sis
[332] Chris Watson, 'Acts and Statutory Instruments: the volume of UK legislation 1850 to 2019',
https://researchbriefings.files.parliament.uk/documents/CBP-7438/CBP-7438.pdf
[333] Institute for Government, 'Secondary legislation',
https://www.instituteforgovernment.org.uk/publication/parliamentary-monitor-2020/secondary-legislation
[334] Chris Watson, 'Acts and Statutory Instruments: the volume of UK legislation 1850 to 2019',
https://researchbriefings.files.parliament.uk/documents/CBP-7438/CBP-7438.pdf

regulations that had been in operation.[335] Given the deep parliamentary complexity of SIs and the high impact outcomes for citizens which result from their use, it is worth considering the findings of the Joint Committee on Statutory Instruments in parliament during this time (as set out below).

What was the impact of the COVID-19 Regulations on the Rule of Law?[336]

In July 2021, parliament's Joint Committee on Statutory Instruments published their *Rule of Law Themes from COVID-19 Regulations* report which found:

Sub-delegation

- 'The presumption against the sub-delegation of legislative power is a long-standing and important principle'.
- The Committee stated 'that the pandemic should not become an opportunity to depart from it unnecessarily.
- 'The Committee believes that statutory instruments should not delegate legislative power unless expressly permitted to do so by the enabling power, and that enabling powers should not permit legislative sub-delegation as a matter of course.'

Offences

- Two key issues were identified by the Committee in relation to the way that criminal offences relating to Covid-19 were drafted: lack of clarity and irrationality.
- There were 'a number of provisions where the terms of the restrictions had not been cast with sufficient clarity'.
- For example, 'Isolation regulations… required people to stay in a "suitable place", without objective criteria on the face of the regulations setting out how the suitability of accommodation was to be determined.'
- Discussing offences' lack of clarity, the Committee contended that 'it is difficult for businesses and customers to have respect for a law that prohibits off-licences from selling alcohol at certain times, but expressly permits them to remain open for the purposes of delivery and collection of orders placed remotely, without specifying any kind of minimum delay between order and collection.'

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[335] Hansard Society, 'Coronavirus Statutory Instruments Dashboard', https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard#total-coronavirus-sis

[336] House of Lords and House of Commons Joint Committee on Statutory Instruments, 'Rule of Law Themes from COVID-19 Regulations', https://committees.parliament.uk/publications/6952/documents/72746/default/

- As such, the 'irrationality of such precise provisions' consequently 'make them dangerous in rule of law terms, particularly in contexts where a breach of the regulations is a criminal offence, as they inevitably tend to diminish respect for the criminal law.'
- The Committee stresses 'that criminal offences should be drafted in a way that provides certainty and is not likely to diminish respect for the law.'

Guidance

- The Committee suggest the government have been 'blurring the distinction between the law and guidance'.
- They express concern 'that guidance has been used in the context of the pandemic response in a way that appears to attempt to impose more severe restrictions than are imposed by law, by presenting the guidance to the public as if it were law that compelled compliance'.
- They cite 'regulations made in early 2021 to impose severe restrictions on movement in all areas of England' as an example whereby some restrictions were not included in the regulations and as such were not legally enforceable.
- 'The rule of law requires a clear distinction to be made between non-statutory guidance and requirements imposed by law. Whereas non-statutory guidance may influence, the law requires compliance'.
- They suggest that when the original 'enabling power does not permit it, Departments cannot add to the law by referring informally to guidance. Such guidance has not undergone parliamentary scrutiny and has no place in amplifying the law.'

Timing

- The Committee point to the fact that regulations have 'been published with so little notice that confusion arose about when they came into force', and that regulations have 'come into force before they were laid before Parliament'.
- Whilst the Committee acknowledge the pressures facing the government, they do, however, expect 'the Government to ensure that people are given as much notice as possible even in those circumstances, and particularly where the legislation in question has such intrusive effects on people's lives or where it criminalises behaviour that is usually perfectly ordinary.'

Temporary provisions

- In regard to the temporary provisions which have been used during the pandemic, the Committee notes that some provisions intended to be temporary 'effectively remain in force'.

- The Committee stress that 'Where emergency legislation makes significant changes on a temporary basis, those changes should not be made permanent without careful consideration. In particular, where legislation affects fundamental rights, those rights should not be quietly diluted under the cover of the pandemic response.'

A brief report for the UCL Constitution Unit also examined coronavirus legislation and the rule of law – stating that 'The legislation passed in response to the COVID-19 crisis also raised wider questions about the rule of law.'[337] For instance, as with Sumption's analysis, the report notes that instead of using the Civil Contingencies Act 2004 (which is designed to deal with an emergency) the government chose to use other legislative vehicles, such as making the lockdown regulations in accordance with the Public Health (Control of Disease Act) 1984.

It is because of that choice of the Public Health Act 1984, combined with Statutory Instruments being created through the urgency procedure under that Act (through section 45R) we reach the imperfect outcome in which an instrument had come into legal force immediately, even a number of hours before being laid before Parliament.

In the previous table above reporting on the Hansard Society's findings, it could be seen that this applied to some 22 per cent of SIs. Those instruments remain in force unless either House fails to agree on a resolution approving the instrument within 28 days. Many people would conclude of any legislative instrument that has received no prior democratic scrutiny before it comes into force, that it could be questionable in principle. If we consider the example of the urgency procedure which was used to enact SI 350/2020, it should be considered 'inappropriate due to the nature of the far-reaching restrictions imposed', as one researcher found.[338] Tasneem Ghazi cautiously points out on The Constitution Society website that this instrument contained, amongst other aspects, the Home Confinement Regulations, bringing forward some of the most drastic restrictions on regular life since the Second World War – including prohibiting leaving home without a reasonable excuse. Yet, the public and MPs were confronted with a predicament in which these regulations came into force immediately, an hour before being laid before Parliament.

Writing for *Prospect Magazine*, Adam Wagner discussed the loss of British people's liberties since the start of the coronavirus pandemic in March 2020. As he noted, despite lockdown laws being 'radically different' to any other law in English history, they were not 'closely considered in parliament.' The Coronavirus Act 2020 was accelerated through parliament, and the government made the decision to impose lockdown through secondary legislation in the Public

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[337] Constitution Unit Monitor 75, 'The constitution under COVID-19', https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/monitor_75_update.pdf
[338] Tasneem Ghazi, 'Coronavirus regulations and the abuse of the 'urgency procedure'', https://consoc.org.uk/coronavirus-regulations-and-the-abuse-of-the-urgency-procedure/

Health (Control of Disease) Act 1984. Part 2A of that Act, which was introduced following the Sars outbreak, 'gave a minister the power to make 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"'.[339] It was that initial choice of legislation and reliance on secondary legislation that essentially resulted in the erosion of liberty and the corresponding rule of law.

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[339] Adam Wagner, 'Taking liberties: Covid-19 and the anatomy of a constitutional catastrophe', https://www.prospectmagazine.co.uk/essays/adam-wagner-covid-lockdown-law-democracy-essay

5. The principle of cost-benefit analysis and understanding impacts

If we are to look at UK governance processes during the experience of Covid-19, a defining feature has been that the role of impact assessments and cost-benefit analyses have been disproportionately downgraded to the extent that no measurable impact assessment (pre- or post-policy) has been conducted on the various health interventions.

Understanding impact is vital because, as the Science and Technology Committee found, despite the 'wider and indirect effects' of the measures taken to contain Covid-19 – such as on mental health and education progress – the assessment of these wider impacts remained much less transparent than the epidemiological analysis. Those people conducting the analysis and giving advice are less visible than epidemiological modelling advisers. Their role in decision-making was opaque. [340]

The similar aversion by government and public bodies to understanding impacts resulting from their net zero legislation and policies is causing immense damage to sensible and smart environmental policies. For example, the current climate change narrative suggests that climate-fuelled disasters are now deadlier, but over the past century, climate-related deaths have dropped an astounding 96 per cent to about 18,000 in an average year, as Professor Bjorn Lomborg demonstrates.[341] And despite the fact the global population has quadrupled, global death risk from climate change in the 2010s dropped by more than 99 per cent[342] – but because we listen to only one narrow band of climate-goal enthusiasts, and where policy impacts are rarely published, government has come to accept a narrative formed out of poorly evidenced worst-case scenarios and forecasts. Had we acknowledged real-world impacts, we might realise that our adaptive capacity is vastly greater than the risks posed.

In regular health economics, a cost-benefit analysis is a form of evaluation.[343] Costs and outcomes are valued in money terms. This allows the observer to assess whether an intervention is worthwhile. The conclusion of a cost-benefit analysis enables a broad comparison to be made between alternative claims on limited (societal) resources, thereby enabling 'such comparisons to be made between treatment options within health care'.[344] The

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[340] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://committees.parliament.uk/publications/4165/documents/41300/default/
[341] Bjorn Lomborg, 'Data contradicts climate-alarmist reporting', https://www.businesslive.co.za/bd/opinion/2021-09-13-bjorn-lomborg-data-contradicts-climate-alarmist-reporting/
[342] Bjorn Lomborg, 'Data contradicts climate-alarmist reporting', https://www.businesslive.co.za/bd/opinion/2021-09-13-bjorn-lomborg-data-contradicts-climate-alarmist-reporting/
[343] A Shiell, C Donaldson, C Mitton and G Currie, 'Health economic evaluation', https://jech.bmj.com/content/56/2/85
[344] A Shiell, C Donaldson, C Mitton and G Currie, 'Health economic evaluation', https://jech.bmj.com/content/56/2/85

costs would be those of implementing a certain type of intervention; benefits are those resulting from an intervention, such as medical costs avoided, or the monetised value of a health improvement.[345] While it is not being suggested that everything can be valued in monetary terms, nor the preservation of human life strictly quantified, a cost-benefit framework is still useful as all impacts on costs and benefits can be spelled out to highlight where trade-offs have been or can be made, notably between tangible costs and those that are intangible.[346]

So too should impact assessments be recognised as a normal aspect of policy-making. Regulatory impact assessments (RIAs) in economic interventions are a key tool for delivering better regulation to support the objective of regulating only when necessary, and to do so in a way that is proportionate to the risks being addressed, and to deregulate and simplify wherever possible.[347] As a tool which informs policy decisions, the Northern Ireland Executive has a valuable report on how those assessments can help to assist with consideration of potential economic impacts and would therefore be considered with other tools utilised to assess a range of impacts on policy development. It is often used to support policy development for any new proposals or amendments to already existing plans. It is encouraged, therefore, to be considered for 'every policy and strategy'.

This kind of analysis is essentially an assessment of the impact of policy options in terms of the costs, benefits and risks of a policy measure. The process of gathering impact assessments is used widely across EU Member States and in other countries, including the UK. Notably, the standard RIAs that might be done at a local level appear especially relevant to what went so wrong during the pandemic. For example, a regulatory impact assessment would be asked to consider 'relevant and viable options', including 'alternatives to legislative regulation, no regulation, self or co regulation', or 'Equally important, is the 'do nothing' option.' It would suggest the assessor carry out 'research and discussions with stakeholders on similar policy stances in other regions and jurisdictions'.[348]

While the underlying rationale for many major policies and regulations during the pandemic are clear to many, the impact assessment could have asked the assessor to consider various impacts, costs, benefits, risks, implementations, economic assessments and the role of other UK regions. It would have demanded a wide stakeholder engagement, that measures were 'proportionate to the need' and the 'Full assessment of the potential or perceived effects

[345] Centers for Disease Control and Prevention, 'Cost-Benefit Analysis', https://www.cdc.gov/policy/polaris/economics/cost-benefit/index.html
[346] A Shiell, C Donaldson, C Mitton and G Currie, 'Health economic evaluation', https://jech.bmj.com/content/56/2/85
[347] Department for the Economy, 'Regulatory impact assessment (RIA) guidance', https://www.economy-ni.gov.uk/articles/regulatory-impact-assessment-ria-guidance
[348] GOV.UK, 'Northern Ireland Regulatory Impact Assessment', https://www.economy-ni.gov.uk/sites/default/files/publications/deti/ni-regulatory-impact-assessment-guidance.pdf

(including impacts and burdens) of the identified policy options'. It would have ensured assessors would have looked to find some kind of 'input from regulators, businesses, business representatives, other stakeholders, other regions and jurisdictions'. It would then enable government to consider 'wider economic, trade and investment impacts that may result from the policy intervention'. And it would enable all authorities to 'Carry out a comprehensive costing and benefit assessment of the effects from the various options'.[349]

The investigatory work would have enabled a more thorough risk assessment to demonstrate trade-offs. The government might have been able to consider the medium- to longer-term 'associated risks with the policy intervention and options, including wider economic impacts', not least to secure the general public's long-term compliance with regulation.

In the comparable Australian context, Windholz explores how public legitimacy of Covid restrictions is critical because 'compliance with government policy and the law can depend significantly on people's perception of the legitimacy… of the regulatory regime and the regulators within it'. It is 'closely associated with trust', which leads to compliance. This is especially crucial during a crisis.[350]

When we look at the corresponding economic challenge, an appreciation of impacts might have enabled an economic assessment of the best option. Impact assessments enable the government to 'Assess the wider economic, trade and investment implications of the preferred option from the analysis – including …impact on potential trading for the business sector affected'. An impact assessment could be deployed to provide some justification and details to the public on the proposed implementation of the policy, and what action was to be taken to 'secure compliance and what enforcement action will be available …for non-compliance'.[351]

What would a regulatory impact assessment (RIA) have told us about a piece of regulation?

If one were to turn to the regular template below for UK government officials to use when completing a RIA for government policy,[352] a series of questions would have put some of the Covid-related measures in a deeper context, including:
- What is the problem under consideration?

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[349] GOV.UK, 'Northern Ireland Regulatory Impact Assessment', https://www.economy-ni.gov.uk/sites/default/files/publications/deti/ni-regulatory-impact-assessment-guidance.pdf
[350] Eric L Windholz, 'Governing in a pandemic: from parliamentary sovereignty to autocratic technocracy', https://www.tandfonline.com/doi/pdf/10.1080/20508840.2020.1796047?needAccess=true
[351] GOV.UK, 'Northern Ireland Regulatory Impact Assessment', https://www.economy-ni.gov.uk/sites/default/files/publications/deti/ni-regulatory-impact-assessment-guidance.pdf
[352] Department for Business, Energy & Industrial Strategy, 'Regulatory impact assessment template for government policies', https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies

- Why is government action or intervention necessary?
- Total Net Present Social Value.
- Net cost to business per year.
- What are the policy objectives of the action or intervention and the intended effects?
- What are the intended outcomes of intervention? Can these be described in a specific, measurable, achievable, realistic and time-limited (SMART), or similar, way?
- What are the desired effects?
- What will change as a result of intervention?
- What will the indicators of success be?
- What policy options have been considered, including any alternatives to regulation? Please justify preferred option…
- Include a description of the 'do nothing' option and non-regulatory options.
- Is this measure likely to impact on international trade and investment?
- Description and scale of key monetised benefits/costs by 'main affected groups'.
- Other key non-monetised benefits/costs by 'main affected groups'.

For guidance, the assessment recommends the investigating civil servant further consult guidance in the HM Treasury Green Book, the Better Regulation Framework, Guide to Making Legislation and RPC [Regulatory Policy Committee] case histories.[353]

At the core of regulatory impact is the need for the state to answer to the public and parliament to achieve democratic legitimacy and accountability. In the days prior to the pandemic, Victoria Hewson at the Institute of Economic Affairs had observed that the 'increasing number of regulations and complexity of the regulatory state, and the inability of government and regulators to manage it and voters to hold them to account, threatens democratic legitimacy'.[354]

A growing regulatory state is becoming both intrusive and ineffective. In Hewson's view it is 'imposing burdens that reduce freedom and threaten the rule of law yet failing to achieve welfare gains that might justify such intrusions.' The difficult question, made clear by the author, is whether our 'regulatory state' is achieving the 'stated policy objectives being achieved, and if so at what cost?' Now that we have experienced the pandemic, the issue has become more, not less, pertinent. And if significant regulations for social and economic activity

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[353] Department for Business, Energy & Industrial Strategy, 'Regulatory impact assessment template for government policies', https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies
[354] Victoria Hewson, 'Rules Britannia: Analysing Britain's regulatory burden', https://iea.org.uk/wp-content/uploads/2020/03/DP100_Rules-Britannia_web.pdf

are going to be introduced on the orders of a minster only, we need to know what impact they are expected to have.

The absence of costed impacts was noted in a Public Accounts Committee assessment of the NHS Test and Trace (NHST&T) system. The report by the Public Accounts Committee in March 2021 into NHST&T said that although a well-functioning test and trace programme is key to our success to defeat the virus, NHST&T 'still has work to do to ensure it meets its critical targets and objectives in a timely and cost-efficient manner'. Additionally, at that stage, the Committee note:

> 'There is still no clear evidence to judge NHST&T's overall effectiveness. It is unclear whether its specific contribution to reducing infection levels, as opposed to the other measures introduced to tackle the pandemic has justified its costs.'

In the report, the Committee also criticises a number of elements of NHST&T, including: its ability to 'consistently match supply and demand for its test and trace services, resulting in either sub-standard performance or surplus capacity'; its overreliance 'on expensive contractors and temporary staff'; and stakeholders feeling 'ignored by it.'[355]

Speaking of NHST&T in March 2021, Meg Hillier, Chair of the Public Accounts Committee, remarked that the £22 billion for test and trace was about the annual budget of the Department for Transport, while at that time, paying for consultants at £1000 a day. She added:

> 'Yet despite the unimaginable resources thrown at this project Test and Trace cannot point to a measurable difference to the progress of the pandemic, and the promise on which this huge expense was justified - avoiding another lockdown – has been broken, twice.
>
> 'DHSC and NHST&T must rapidly turn around these fortunes and begin to demonstrate the worth and value of this staggering investment of taxpayers' money. Not only is it essential it delivers an effective system as pupils return to school and more people return to their workplace, but for the £billions spent we need to see a top-class legacy system. British taxpayers cannot be treated by Government like an ATM machine. We need to see a clear plan and costs better controlled.'[356]

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[355] Public Accounts Committee, 'COVID-19: Test, track and trace (part 1)', https://committees.parliament.uk/publications/4976/documents/50058/default/

[356] Public Accounts Committee, '"Unimaginable" cost of Test & Trace failed to deliver central promise of averting another lockdown', https://committees.parliament.uk/committee/127/public-accounts-committee/news/150988/unimaginable-cost-of-test-trace-failed-to-deliver-central-promise-of-averting-another-lockdown/

There doesn't seem to have been any further analysis of this expenditure or meaningful response from the government to explain where the money has gone and whether there is any left in the system. Quite a remarkable absence of accountability.

A separate parliamentary select committee called for government to perform a cost-benefit analysis of a Covid passport system – a policy which the government favoured at certain stages throughout the pandemic and is still implicitly threatened as a new Covid-19 intervention. New rules requiring people to have Covid passports to enter nightclubs in England are due to be introduced in December 2021.[357] The Public Administration and Constitutional Affairs Committee's report on Covid-status certification explored the government's review and the purpose of the Covid-status certification.[358] In regards to the certification, the Committee state that given the conflicting statements by ministers and officials when discussing the system, the Government's approach had risked damaging trust in government and in the measures put in place to tackle the pandemic since it demonstrated an absence of coordination between different departments, if not indicating that senior members of the Government were unaware of the Government's policy direction in this area. It seemed that that there was some effort to downplay the seriousness with which the introduction of a Covid-status certification system was being discussed in government.

Accordingly, the Committee say that if the Government does introduce Covid-status certification, then they should also publish the criteria against which the effectiveness of that system is to be assessed along the lines of the previously discussed impact assessments. Additionally, and despite committing to do so, the Government did not provide the Committee with the 'likely financial costs to the public purse or to businesses and individuals of different models of Covid-status certification'. The Committee state it is paramount that if a Covid-status certification is announced, there should be a cost-benefit analysis undertaken (which should include financial, social and societal costs/benefits) and made public alongside the announcement. Parliament should refuse to implement this certification without such assessments of cost and impact.

Furthermore, whilst the Committee acknowledge that conducting detailed modelling 'is difficult and imprecise', they believe 'it is the best guide to the potential impacts of the range of different scenarios that cannot necessarily be directly tested.' As such, they expect the modelling to also be published alongside any announcement made. And if the government decides not to use such modelling, they must 'provide a clear explanation for why they have

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[357] https://www.bbc.co.uk/news/business-59579503
[358] Public Administration and Constitutional Affairs Committee, 'Covid-Status Certification', https://publications.parliament.uk/pa/cm5802/cmselect/cmpubadm/42/4206.htm#_idTextAnchor037

opted not to use modelling and what account they have taken of different scenarios in its absence.'

Finally, due to the Government's inability to provide answers on the criteria against which the efficacy of that system is to be assessed; the cost-benefit analysis proposals; and the modelling of different scenarios with and without a certificate system, combined with the ministers' assessment that the case of a Covid-status certificate system is 'finely balanced', the Committee found they did not believe that the government had justified the need for a domestic Covid-status certification system.

It was central to the Committee's view that if the system is introduced, it would need to be affected by primary legislation given its 'serious impacts' and its 'possibility of infringing rights and being discriminatory in nature.' By considering the serious impacts, the decision-making process would allow for the full implications of the proposals to be considered by the Government and would provide Parliament a sensible amount of time to scrutinise or amend the Government's proposals.

What does a search of the Government records on Covid-19 tell us about the approach to 'impact assessments'?

Some case could be made that the role of impact assessments had been disproportionately sidelined in government communications. As a general representative survey of how government communications were referencing impact assessments, we looked through all the government communications at www.gov.uk online. Confining our searches to certain subjects – Brexit, Defence, Covid-19, Environment and Health – and searching for references to 'impact assessment', we find that government Covid communications (like defence communications) come back with some of the lowest number of references (0.7 per cent) to 'impact assessment'. In contrast, government Brexit communications returned the greatest number of references (two per cent) to such assessments.

Number of times (%) Government communications refer to 'Impact assessment' on various issues

Brexit	Defence and armed forces	Health and social care	Environment	Covid-19
41/2367 (2%)	35/11914 (0.2%)	195/22386 (0.9%)	438/27963 (1.6%)	35/4854 (0.7%)

Source: https://www.gov.uk/search/all?order=relevance

The broader enthusiasm in society, if not pride for many citizens, for the successful vaccine programme is, as Claire Fox (Director for the Academy of Ideas) describes, dampened by unethical arguments for coercive measures, or the demonisation of those who do not consent. In Fox's view, the prospect of 'domestic vaccine passports or ubiquitous testing regimes to guarantee access to all areas of society' does not bode well;[359] and so, there remains a great deal of uncertainty.

Our comparative aversion to understanding real-world costs and impacts in the Covid-19 policy arena might be matched only by government and public authorities' poor, unscientific and ideological understanding of climate change policy economic costs, which have currently been grossly underestimated. Looking at data from the UN Climate Panel, we can observe that more than 100 years ago, flooding in proportion to global gross domestic product (GDP) was 0.5 per cent.[360] But as Professor Bjorn Lomborg has noted, over the century, it has decreased by a factor of 10, to 0.05 percent.[361] He further shows that while future global warming could lead to more severe weather patterns, the environmental costs will remain minimal, as growth in prosperity and better technology will help mitigate the impact of natural disasters.

Writing for the *BMJ*, Kamran Abassi argues that throughout the pandemic, 'The missing, disempowered voices in all this are those of patients and the public', even though public trust could be restored by redistributing 'power and shift[ing] the balance on who decides about us by rediscovering the lost voices of patients and the public.'[362] 'Policy makers', he argued, 'remain slow to accept responsibility for their decisions, but they are quick to blame the public for vaccine hesitancy or for not following official advice, even when that advice comes as mixed messages.' The public should not be blamed. Blame causes a loss of trust, which in turn impacts negatively on health. At the centre of his thinking is the idea that integrating the public in decision-making 'builds trust and is possibly more important in an emergency when civil liberties are placed at risk.'

As the UK government published its own unsatisfactory cost-benefit analysis of tiered restrictions in late 2020, researchers at Civitas produced a short piece of research which attempted to quantify the estimated costs that have been incurred by the first two 'lockdowns'

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[359] People's Lockdown Inquirer, 'What Price Lockdown? We Asked People On The Front Line', https://peopleslockdowninquiry.co.uk/wp-content/uploads/2021/06/PLI_online.pdf
[360] Hoover Institution, 'Visiting Fellow Bjorn Lomborg Analyzes The Financial Costs And Benefits Of Mitigating Effects Of Climate Change', https://www.hoover.org/news/visiting-fellow-bjorn-lomborg-analyzes-financial-costs-and-benefits-mitigating-effects-climate
[361] Hoover Institution, 'Visiting Fellow Bjorn Lomborg Analyzes The Financial Costs And Benefits Of Mitigating Effects Of Climate Change', https://www.hoover.org/news/visiting-fellow-bjorn-lomborg-analyzes-financial-costs-and-benefits-mitigating-effects-climate
[362] Kamran Abbasi, 'The covid-19 pandemic took power from the people', https://www.bmj.com/content/bmj/373/bmj.n1410.full.pdf

in a Working Paper, *The cost of the cure*.[363] The report included estimates of the loss of lives from delayed treatment for cancer and other diseases; additional domestic violence cases (on pre-pandemic levels) that were recorded; increases in depression, anxiety, loneliness, substance abuse, high-risk drinking among adults, opiate addictions and relapses among addicts; and reduction in learning among primary and secondary pupils.

Why should policy not have considered the impact of lockdown on, for example, the elderly and vulnerable? As two select committees found, given that no precedence was given to social care delivery during the initial phases of the pandemic – emblematic of the long-term failure to give social care the same degree of focus as the NHS – the rapid discharge of people from hospitals into care homes without adequate testing or rigorous isolation has become a symbol of that failure to take account of the consequences of lockdown. Many would acknowledge that the Government needed to move quickly to avoid hospitals being overwhelmed, but it was a mistake to allow patients to be transferred to care homes. In addition to untested staff bringing infection into care homes from the community, this error led to many thousands of deaths which could have been avoided.[364]

In the area of everyday health, Age UK has reported multiple negative effects on the older adult population. Twenty-seven per cent of older people say they cannot walk as far since the start of the pandemic. Older people said 'they feel less steady on their feet, are falling more frequently, and have lost confidence to leave their homes for fear of falling.'[365] Older people reported reduced muscle strength and poorer cardio-vascular health. This has impacted on their ability to look after themselves, making everyday tasks much more difficult in some circumstances. For those struggling before the pandemic, life has become harder. Older people have reported that they are in more pain than they were before the pandemic, with some experiencing debilitating pain daily. Many older people attributed this to a reduction in physical activity. Others had elective surgery delayed, impacting their quality of life. Their fear of catching Covid-19 left many too afraid to leave their home, and even to sit in the garden or access GP/health appointments. Older people found it hard to cope due to the feeling that everything was getting on top of them. Minor problems appeared impossible to deal with and they had lost the skills needed to solve problems and make decisions. At the beginning of the pandemic, the demand for Age UK's services 'soared'. For instance, the Advice Line peaked at almost double

[363] Tim Knox and Jim McConalogue, 'The cost of the cure', https://www.civitas.org.uk/publications/what-price-lockdown/

[364] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 14

[365] Age UK, 'Impact of Covid-19 on older people's mental and physical health: one year on', https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/health--wellbeing/coronavirus/impact-of-covid-19-on-older-peoples-health_one-year-on.pdf

the usual number of calls. Demand for Age UK's Telephone Friendship Service trebled.[366] Not enough attention had been paid to these meaningful qualitative impacts.

In discussing the level of restrictions imposed, Laura Dodsworth interpreted the setting aside of cost-benefit analyses and impact assessments by noting that 'While death tolls and cases dominated the headlines, other metrics were quieter casualties'. The author noted that the discussion of all impacted metrics is essential for people to make cost-benefit analyses. In the examples cited by Dodsworth, Covid deaths were not balanced against unemployment, the lengthening NHS waiting list, missed cancer screenings, national debt, business closures, or calls to suicide helplines. It was clear from Dodsworth's analysis that there had been a lack of critical thinking about parallel effects. Another commentator, David Paton (Professor of Industrial Economics at Nottingham University Business School) told Dodsworth, 'We don't say no one is allowed to drive a car to prevent all road traffic accidents'. It is therefore not unhealthy or in any way wrong to discuss trade-offs and take a cost-benefit approach.[367]

For those who manage our NHS institutions, who tend to lean politically left and profess a primary adherence to the principle of democratic 'inclusion' above all else, there has been little thinking on why such major decisions have often been made with so little involvement of the public in the deliberative process as to which policies should be pursued. If people are to abide by increasingly tight restrictions over substantial periods of time, then those policies must be accepted as fairly arrived at through open and inclusive decision-making. The culture of restriction-enthusiasm overpowered any desire for greater inclusion.

The intense restriction-enthusiasm within the political, cultural and scientific elites – at the expense of those who were either sceptical or unable to draw a halt to their livelihoods – was evident from the regular broadcasts of leading opinion. Ensuring scientific advisers from SAGE were able to broadcast their personal views in the media during the pandemic was an oddity in many respects – not least because it seemed to undermine the direct accountability that ministers should have for policy. There is no clear consensus on the role of scientific advisers directly giving their views to the public at the same time as being advisers to the government. Civil servants are expressly forbidden to do this.

In January 2021, the Science and Technology Committee published their report indicating that the public 'benefitted' from seeing and hearing directly from scientists advising the Government, and overall trust in science has remained high'. However, they did also mention that, as the Office for Statistics Regulation had advised, 'data and statistics should be presented in ways that align with high standards of clarity and rigour—especially when they are used to

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[366] Age UK, 'Impact of Covid-19 on older people's mental and physical health: one year on', https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/health--wellbeing/coronavirus/impact-of-covid-19-on-older-peoples-health_one-year-on.pdf

[367] *A State of Fear: How The UK Government Weaponised Fear During the Covid 19 pandemic* by Laura Dodsworth, pp. 147-148.

support measures of great public impact.'[368] Nonetheless, as early SAGE guidance also advocated, the Committee seemed wholly supportive of SAGE scientists who were both offering independent advice to the government and able to speak to the media, irrespective of authority, qualification or experience on restrictions across the entirety of society. Any critic of restrictions, by comparison – from some of the most experienced businesspeople and journalists in the country through to reflective academics and researchers – were portrayed in the regular media as outside the bounds of acceptable discourse.

As Tom Slater, editor of the online magazine *Spiked* remarked, after March 2020, many in the media seemed to cross the line from challenging or scrutinising the government on its voluntary approach to demanding that it should go further – they effectively shifted 'from playing devil's advocate to becoming advocates for lockdown.'[369] The consequences of this, Slater notes, is that there has been a collective failure even to subject lockdown policies to a level of scrutiny demanded by such unprecedented restrictions. It not only shut down the 'discussion of potential alternatives' but stifled a media debate that 'might have better exposed the costs and trade-offs involved in locking down society.'

In the context of online reporting and commentary, consider the following impacts and alternatives which were raised, and the Big Tech and social media company treatment they received.

Media case study examples: censorship during the Covid-19 pandemic

21 May 2020. 'Banned by YouTube: Professor Karol Sikora discusses Covid-19', Unherd.[370]

- An interview with Professor Karol Sikora was taken down by YouTube as the company claimed it violated their guidelines. Originally, YouTube rejected the appeal to have the video reinstated, but it was soon put back online – with a YouTube spokesperson telling the *Washington Examiner* that the video was mistakenly banned.[371]

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[368] Science and Technology Committee, 'The UK response to covid-19: use of scientific advice', https://committees.parliament.uk/publications/4165/documents/41300/default/
[369] People's Lockdown Inquirer, 'What Price Lockdown? We Asked People On The Front Line', https://peopleslockdowninquiry.co.uk/wp-content/uploads/2021/06/PLI_online.pdf
[370] Freddie Sayers, 'Banned by YouTube: Professor Karol Sikora discusses Covid-19', https://unherd.com/thepost/professor-karol-sikora-fear-is-more-dangerous-than-the-virus/
[371] Emma Colton, 'YouTube reinstates video of doctor claiming 'fear is more deadly' than coronavirus', https://www.washingtonexaminer.com/news/youtube-reinstates-video-of-doctor-claiming-fear-is-more-deadly-than-coronavirus

- During the interview, Karol Sikora said: the virus is 'getting tired'; there is existing herd immunity; fear is more deadly than the virus; and that schools should reopen in June as 'children are not the transmitters of this virus.'*372*

20 November 2020. 'Two top Oxford academics accuse Facebook of censorship for branding their article on whether masks work "false information"', Daily Mail.[373]

- Facebook put a warning on Carl Heneghan and Tom Jefferson's *Spectator* article 'Landmark Danish study finds no significant effect for facemask wearers'[374] after Heneghan posted a link to the article on his Facebook page.
- 'Facebook cited a review by 'independent third-party fact-checkers' Health Feedback, titled: 'Danish face mask study did not find that masks were ineffective at reducing spread of Covid-19; study was underpowered and results were inconclusive.' But this did not mention Heneghan and Jefferson's article.
- Heneghan responded to the warning, saying nothing in the article was false and that it was an act of censorship by Facebook. And *The Spectator* said they had changed 'the headline to emphasise that the study is about face-mask wearers' following the interest in it.
- A spokesperson for Facebook said: 'Publishers are of course able to appeal the ratings and judgments of the fact checkers.'[375]

17 October 2020. 'Why can't we talk about the Great Barrington Declaration?'[376]

- Google 'shadow banned' the Great Barrington Declaration. (A shadow ban is where the search results are suppressed by the hosts.)
- The Great Barrington Declaration from scientists called for a 'focussed protection' approach to Covid-19.
- The Great Barrington Declaration no longer appears to be 'shadow banned' by Google (checked 9 November 2021).[377]

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[372] Freddie Sayers, 'Banned by YouTube: Professor Karol Sikora discusses Covid-19', https://unherd.com/thepost/professor-karol-sikora-fear-is-more-dangerous-than-the-virus/

[373] Stephen Adams, 'Two top Oxford academics accuse Facebook of censorship for branding their article on whether masks work 'false information'', https://www.dailymail.co.uk/news/article-8973631/Two-Oxford-academics-accuse-Facebook-censorship-article-warning.html

[374] Carl Heneghan and Tom Jefferson, 'Landmark Danish study finds no significant effect for facemask wearers', https://www.spectator.co.uk/article/do-masks-stop-the-spread-of-covid-19-

[375] Stephen Adams, 'Two top Oxford academics accuse Facebook of censorship for branding their article on whether masks work 'false information'', https://www.dailymail.co.uk/news/article-8973631/Two-Oxford-academics-accuse-Facebook-censorship-article-warning.html

[376] Toby Young, 'Why can't we talk about the Great Barrington Declaration?', https://www.spectator.co.uk/article/why-cant-we-talk-about-the-great-barrington-declaration

[377] https://www.google.com/search?q=%22great+barrington+declaration%22&hl=en&ei=do-KYeDOAaTP7_UP3eyGmAk&oq=%22great+barrington+declaration%22&gs_lcp=Cgdnd3Mtd2l6EAMyBQgAEIAEMgUIABCABDIFCAAQgAQyBQgAEIAEMgUIABCABDIFCAAQgAQyBQgAEIAEMgUIABCABDIFCAAQgAQyBQgAEIAEOgcIABBHELADOgYIABAWEB5KBAhBGABQ_AFY_wpg8Q1oAXACeACAAUmIAbIDkgEBN5gBAKABAcgBCMABAAQ&sclient=gws-wiz&ved=0ahUKEwjg4aqcyIv0AhWk57sIHV22AZMQ4dUDCA4&uact=5

5 January 2021. 'YouTube terminates TalkRadio's channel following lockdown criticism', Guido Fawkes.[378]

- Shortly after the UK Government announced a third lockdown, YouTube removed the TalkRADIO channel from its website.
- YouTube claimed the channel was 'terminated for violating YouTube's community guidelines.'
- TalkRADIO's YouTube channel has since been reinstated – with a YouTube spokesperson telling *MailOnline*: 'TalkRadio's YouTube channel was briefly suspended, but upon further review, has now been reinstated.'[379]

11 February 2021. 'Facebook censors award-winning journalist for criticising the WHO', Unherd.[380]

- 'Ian Birrell, a multi-award-winning investigative reporter… was unimpressed with the hastily concluded World Health Organisation investigation, and the way in which some potential explanations were thrown out with the encouragement of the Chinese regime.'
- The article was labelled as misinformation.
- 'Update – Facebook has apologised for wrongly accusing Ian Birrell and *UnHerd* of spreading misinformation: "This was a mistake on our part. A fact-checking label was wrongly applied to this post yesterday & it was removed earlier this morning. We're very sorry for any inconvenience or confusion caused."'[381]

26 May 2021. 'Facebook no longer treating "man-made" Covid as a crackpot idea', Politico.[382]

- 'Facebook announced in February it had expanded the list of misleading health claims that it would remove from its platforms to include those asserting that "Covid-19 is man-made or manufactured."' The company 'has updated its policies against false and misleading coronavirus information, including its running list of debunked claims, over the course of the pandemic in consultation with global health officials.'

[378] Guido Fawkes, 'YouTube terminates talkRADIO's channel following lockdown criticism', https://order-order.com/2021/01/05/youtube-terminates-talkradio-channel-following-lockdown-criticism/
[379]Jack Wright and Henry Martin, 'TalkRadio's channel is REINSTATED by YouTube in U-turn after it was shut down by tech giant over claims it 'violated' the website's 'community guidelines' by airing criticism of coronavirus lockdowns', https://www.dailymail.co.uk/news/article-9114039/Covid-UK-YouTube-shuts-TalkRadios-channel-presenters-challenge-lockdown-policy.html
[380] Freddie Sayers, 'Facebook censors award-winning journalist for criticising the WHO', https://unherd.com/thepost/facebook-censors-award-winning-journalist-for-criticising-the-who/
[381] Ian Birrell, 'The WHO's Covid shame', https://unherd.com/2021/02/the-whos-covid-shame/
[382] Cristiano Lima, 'Facebook no longer treating 'man-made' Covid as a crackpot idea', https://www.politico.com/news/2021/05/26/facebook-ban-covid-man-made-491053

- A spokesperson for Facebook said that the origin language had been stricken from that list due to the renewed debate about the virus' roots: 'In light of ongoing investigations into the origin of Covid-19 and in consultation with public health experts, we will no longer remove the claim that Covid-19 is man-made from our apps… We're continuing to work together with health experts to keep pace with the evolving nature of the pandemic and regularly update our policies as new facts and trends emerge.'

21 May 2020. 'Panorama's biased contribution to the BBC's Project Corona Fear', NewsWatch/ConservativeWoman.[383]

- David Keighley: A BBC One *Panorama* programme showed there was a massive failure in the distribution and availability of personal protective equipment (PPE) for NHS staff. The show argued there was 'only one culprit' for this, 'the government' – rather than, for instance, NHS bureaucracy, PHE, or the sheer complexity of the crisis.
- Guido Fawkes[384] also reported six of the 'experts' chosen by the programme for this episode were Labour sympathisers or activists.
- The then Culture Secretary, Oliver Dowden, also wrote to the BBC Director about the show's claims.
- This was a breach of editorial guidelines because the audience was not told that they were biased observers. Keighley said: 'in the BBC's book, only the government could be to blame for PPE problems.'[385]
- Despite these complaints, the BBC defended itself in the Panorama investigation – specifically pointing to comments made by the Prime Minister, in which he said: 'I'm not going to minimise the logistical problems we've faced in getting the right protective gear to the right people in the right place, both in the NHS and care homes.'[386]

5 June 2021. 'Ofcom accused of stifling "criticism" of government's Covid response', Telegraph.[387]

- The broadcaster regulator Ofcom was accused of stifling 'rational criticism' of the response to Covid by labelling scepticism about Britain's approach to the pandemic as 'misinformation'.

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[383] David Keighley, 'Panorama's biased contribution to the BBC's Project Corona Fear', https://www.conservativewoman.co.uk/panoramas-biased-contribution-to-the-bbcs-project-corona-fear/
[384] Guido Fawkes, 'Panorama's PPE investigation was party political broadcast', https://order-order.com/2020/04/28/panoramas-ppe-investigation-party-political-broadcast/
[385] David Keighley, 'Panorama's biased contribution to the BBC's Project Corona Fear', https://www.conservativewoman.co.uk/panoramas-biased-contribution-to-the-bbcs-project-corona-fear/
[386] Ben Quinn, 'BBC stands firm against minister's criticism of Panorama show on PPE', https://www.theguardian.com/media/2020/may/03/bbc-stands-firm-against-ministers-criticism-panorama-show-ppe-coronavirus
[387] Edward Malnick, 'Ofcom accused of stifling "criticism" of government's Covid response', https://www.telegraph.co.uk/politics/2021/06/05/ofcom-accused-stifling-criticism-governments-covid-response/

- The MP Steve Baker commented: 'To label any kind of rational criticism as misinformation is unscientific, and a frank rejection of enlightenment values which would catapult us into a new dark age.'
- Jon Dobinson, campaign director of Recovery, said: 'Shockingly, Ofcom is telling broadcasters that they could face losing their licences if they report facts or expert scientific opinions which could suggest that lockdowns and restrictions are excessive.'
- A spokesperson for Ofcom said: 'Ofcom is required by law to promote media literacy… Broadcasters are free to express views that differ from or challenge official authorities on public health information, or that are inconsistent with their approach to combating Covid.'

30 March 2020. Rapid Response Unit.

- In March 2020 the government announced that its Rapid Response Unit would be operating within the Cabinet Office and Number 10 to tackle 'a range of harmful narratives online'.[388]
- The Culture Secretary at the time (Oliver Dowden) insisted it was needed 'to stem the spread of falsehoods and rumours, which could cost lives.'[389] He said: 'When we see this dangerous content getting traction, or being shared unchecked, we're acting fast.'[390]

23 March 2021. 'Poster banned as "political", the wrong kind of political', Guido Fawkes.[391]

- 'JC Decaux, the world's largest poster company, have refused to run [a poster campaign by the business backed campaign to unlock the economy, Recovery]'. It said: 'due to the political undertones within the messaging of the artwork we are unable to run this campaign.' This was despite JC Decaux running countless political campaigns over the years.
- 'Similarly, a poster site at Salford owned by Trafford Council banned the poster from being used.' Trafford Council said the poster could not be used 'as it is political and breaches our advertising policy.'
- Guido Fawkes said: 'One-sided bans on political advertising are a dangerous form of censorship… Recovery is making a fair-minded political argument about the timing of the wind-down of this lockdown.'

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[388] GOV.UK, 'Government cracks down on spread of false coronavirus information online', https://www.gov.uk/government/news/government-cracks-down-on-spread-of-false-coronavirus-information-online

[389] BBC News, 'Coronavirus: Fake news crackdown by UK government', https://www.bbc.co.uk/news/technology-52086284

[390] Oliver Dowden, 'Inaccurate news stories and posts circulating online could cost lives – always double check before sharing', https://www.telegraph.co.uk/news/2020/03/29/inaccurate-news-stories-posts-circulating-online-could-cost/

[391] Guido Fawkes, 'Poster banned as "political", the wrong kind of political, https://order-order.com/2021/03/23/poster-banned-as-political/

1 June 2020. 'YouTube is censoring lockdown sceptics', Spiked.[392] [393]

- An interview with Peter Hitchens was delisted from YouTube's search function because he opposes lockdown.
- 'His interview on the *Triggernometry* podcast has been "shadow banned". It has not been deleted but it could not be found by searching for it on YouTube and Google.'[394]
- At this stage, Hitchens' interview no longer appears to be shadow banned by YouTube (checked 9 November 2021).[395]

The positive impacts of the government's restrictions were to be broadcast on every television in the land. On the other hand, the negative impacts were to be demolished and removed from public sight, then cast out as 'misinformation'. Social media companies compounded the censorious impact on public debate in Britain during the lockdown period, buttressing Britain's, and many other Western governments', support for a culture of restriction-enthusiasm. This presents a real problem for future governance because during the pandemic there was a situation in which multinational social media companies were influencing the parameters of democratic discussion in Britain and elsewhere. On some occasions, it might be understandable why social media companies made some of these decisions during the pandemic. They are not accountable to anyone in particular, but it is logical, up to a point, to presume that a multinational company would follow the advice of a multilateral institution, such as the WHO, in their guidance for what should and shouldn't be posted on social media. But if journalists in Britain are finding their written articles influenced by social media companies, and in some cases censored, then this presents a challenge for governance. If limits are to be set on speech in Britain, then those limits should be surely determined by Parliament or public institutions, not global media companies.

In understanding impacts, the broadcast media must seek to address the ethical question of how a state – both its ministers and its wider advisory groups – should be enabled through all channels to produce differing and ongoing communications which do in fact induce 'greater uncertainty and anxiety amongst the public'. The central tenet of a book released recently, *A State of Fear: How the UK government weaponised fear during the Covid-19 pandemic* by Laura

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[392] Spiked, 'YouTube is censoring lockdown sceptics', https://www.spiked-online.com/2020/06/01/youtube-is-censoring-lockdown-sceptics/

[393] @triggerpod, https://twitter.com/triggerpod/status/1267424028513447940

[394] Spiked, 'YouTube is censoring lockdown sceptics', https://www.spiked-online.com/2020/06/01/youtube-is-censoring-lockdown-sceptics/

[395] https://www.youtube.com/results?search_query=peter+hitchens+triggernometry

Dodsworth, is that the use of fear to create compliance is 'ethically dubious' and, at the very least, warrants public debate. In a short window of time, behavioural psychology has become core to how the UK government does its influencing business, and these days it's the business of fear. The psychologists 'are operating in ethically murky waters in implementing their nudges, without our consent, to promote mass acceptance of infringements on our basic human freedoms,' said Gary Sidley, a retired clinical psychologist. The ethics of nudging deserve their own consultation but are even more worthy of scrutiny when one considers the ongoing crisis associated with 'the elevated fear levels'.[396]

At fault, however, has been the pressure by state and large corporations to marginalise a deliberative decision-making process which is inclusive, transparent and accountable to the public. In an article for the *Nature Medicine* journal, a team of seven researchers identified that during the Covid-19 pandemic, governments have been forced 'to make difficult choices that profoundly affect the health, wealth and freedoms of their populations' – and that 'these high-stakes decisions have often been made quickly, with little involvement of stakeholders in the deliberation about which policies to pursue.' [397] Given the uncertain duration of the pandemic, the authors suggest there are crucial 'moral, legal and practical reasons to engage in open and inclusive decision-making processes', such as 'an improvement in the quality of decisions' made and the 'adherence to restrictions on behavior that are necessary to curb the spread of the virus.'[398]

Their research suggests 'that deliberative decision making that is inclusive, transparent and accountable can contribute to more trustworthy and legitimate decisions on difficult ethical questions and political trade-offs during the pandemic and beyond' – particularly as some governments' use of emergency powers throughout the Covid-19 pandemic 'has side-lined, challenged and weakened democratic processes.'[399]

As governments have subsequently 'turned to general or targeted lockdowns coupled with public health messaging, testing and contact tracing', the researchers note this consequently 'limits liberties' and can have negative consequences for things such as short-term economic growth and people's mental health. They even noted that, if not well executed, recurrent

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[396] *A State of Fear: How The UK Government Weaponised Fear During the Covid 19 pandemic* by Laura Dodsworth, p. 103.
[397] Ole F. Norheim, Joelle M. Abi-Rached, Liam Kof Bright, Kristine Bærøe, Octávio L. M. Ferraz, Siri Gloppen and Alex Voorhoeve, 'Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making', https://www.nature.com/articles/s41591-020-01204-6
[398] Ole F. Norheim, Joelle M. Abi-Rached, Liam Kof Bright, Kristine Bærøe, Octávio L. M. Ferraz, Siri Gloppen and Alex Voorhoeve, 'Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making', https://www.nature.com/articles/s41591-020-01204-6
[399] Ole F. Norheim, Joelle M. Abi-Rached, Liam Kof Bright, Kristine Bærøe, Octávio L. M. Ferraz, Siri Gloppen and Alex Voorhoeve, 'Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making', https://www.nature.com/articles/s41591-020-01204-6

lockdowns and other restrictive public health measures can cause 'pandemic fatigue' and 'social unrest'.[400]

According to the researchers, open and inclusive decision-making involves political leaders, experts and the public, and there should be accountability so 'All affected individuals and groups can challenge decisions'. It should be made clear that 'Mechanisms are in place for feedback and revision when new challenges or evidence emerge'. The government and its public bodies might soon come to accept that 'Critical scrutiny of evidence and uncertainty can improve decisions.' After all, open, inclusive decision-making builds trust, and this can improve adherence to policies, making them more effective.

Lockdown impact assessments

Throughout the pandemic, the government has changed and restricted the way we live our lives, telling us who we could and could not have physical contact with, closing schools, or making face masks a legal requirement. These rules have never been placed on citizens before, yet impact assessments have remained few in number and tend only to be made after policies have been implemented, if at all.

It was not until November 2020, nine months into the pandemic, that the government published a paper, *Analysis of the health, economic and social effects of Covid-19 and the approach to tiering*. According to the report, the government has made its decisions regarding the coronavirus pandemic by bringing 'together the timeliest and most relevant information on health, society and the economy' because 'There are, of course, significant costs associated with getting the virus in check, for individuals, society and the economy.' However, in the report it is stated whilst 'it is clear that restrictions to contain COVID-19 have had major impacts', they found 'it is not possible to forecast the precise economic impact of a specific change to a specific restriction with confidence'. But not having restrictions and 'allowing Covid-19 to grow exponentially is much worse for public health.'[401] One may ask, though, in the absence of a serious cost-benefit analysis, how they could possibly judge the effectiveness of their various interventions. Some non-pharmaceutical interventions have led to serious non-Covid health outcomes, as has been found routinely. The question should not be whether we

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[400] Ole F. Norheim, Joelle M. Abi-Rached, Liam Kof Bright, Kristine Bærøe, Octávio L. M. Ferraz, Siri Gloppen and Alex Voorhoeve, 'Difficult trade-offs in response to COVID-19: the case for open and inclusive decision making', https://www.nature.com/articles/s41591-020-01204-6

[401] HM Government, 'Analysis of the health, economic and social effects of COVID-19 and the approach to tiering', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944823/Analysis_of_the_health_economic_and_social_effects_of_COVID-19_and_the_approach_to_tiering_FINAL_-_accessible_v2.pdf

accept government restrictions or nothing ('my way or the highway') but that other rules could have been considered, for example, to enable regular attendance at workplaces and for most hospitality venues to remain open whilst still limiting social gatherings.

Why has the government consistently failed to provide a cost-benefit analysis of its decisions during the pandemic? Some researchers thought it might have been regarded as a political distraction which would neither improve decision-making or public confidence. According to Giles Wilkes from the Institute for Government, decisions are never usually 'made because the CBA said so' – a cost-benefit analysis often follows a decision, it does not usually lead it. Giles Wilkes also finds that as

> 'The pandemic is the most unanticipated crisis in UK government history, and the decisions the government has made have reflected the learning curve up which it has been scrambling. Something as definitive as a cost-benefit analysis of the lockdown would prove a political distraction, and is unlikely to improve either the decision-making or the public's confidence in it.'[402]

It might be argued of the role of impact assessments in decision-making that, rather than acting as a driver of decisions, they can still have a unique value in demonstrating trade-offs. The lack of impact assessments has been demonstrated through the legislation relating to coronavirus. For the Coronavirus Act 2020,[403] the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020,[404] the Health Protection (Coronavirus, Restrictions) (SelfIsolation) (England) (Amendment) (No. 2) Regulations 2021[405] and the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021,[406] no impact assessments were produced.

For the Health Protection (Coronavirus, Restrictions) (SelfIsolation) (England) (Amendment) (No. 2) Regulations 2021, the explanation given for not producing an impact assessment was because the provision was merely a temporary measure in the government's response to Covid-19.[407] For the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021, again, it was stated an impact assessment had not been produced

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[402] Giles Wilkes, 'The doubtful case for an impossible Covid-19 cost-benefit analysis', https://www.instituteforgovernment.org.uk/blog/doubtful-case-impossible-covid-cost-benefit-analysis
[403] Legislation.gov.uk, 'Coronavirus Act 2020', https://www.legislation.gov.uk/ukpga/2020/7/resources
[404] Legislation.gov.uk, 'The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020', https://www.legislation.gov.uk/uksi/2020/350/note/made?view=plain
[405] Legislation.gov.uk, 'The Health Protection (Coronavirus, Restrictions) (SelfIsolation) (England) (Amendment) (No. 2) Regulations 2021', https://www.legislation.gov.uk/uksi/2021/864/pdfs/uksi_20210864_en.pdf
[406] Legislation.gov.uk, 'The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021', https://www.legislation.gov.uk/uksi/2021/582
[407] Legislation.gov.uk, 'The Health Protection (Coronavirus, Restrictions) (SelfIsolation) (England) (Amendment) (No. 2) Regulations 2021', https://www.legislation.gov.uk/uksi/2021/864/pdfs/uksiem_20210864_en.pdf

as the 'instrument is a temporary provision', meaning 'A full Regulatory Impact Assessment is therefore not required and would be disproportionate.' Further, in the legislation's explanatory memorandum, it is acknowledged that the 'instrument will have an impact on affected travellers and businesses but that impact is set against the role that these measures play in reducing the spread of coronavirus'.[408] The obvious and understandable desire to reduce the spread of Covid-19, does not mean less, better or fairer regulation would not have been found.

When the government produced a summary of the impacts of the Coronavirus Bill, it was noted that although 'a formal impact assessment is not required for Better Regulation purposes', risks were discussed and it was 'recognised that in a pandemic situation, with potentially very high counterfactual costs, firm actions may be the most desirable to protect individuals.' Moreover, for the purpose of the summary of impacts, the approach taken was largely to

> '…treat monetised costs and benefits as zero because the Bill is temporary, enabling legislation. This is to say that decisions on whether and how to use elements of the Bill would be taken at some future point, which would require judgement on the specific impacts at that time. For many of the clauses, it is difficult to predict how a power would be used in a specific context, and therefore what the monetised costs would be. Thus, discussion of impacts is largely focussed on unmonetised considerations.'[409]

In terms of equalities, the government would hold – as it did in its 'public sector equalities duty impact assessment' for the Coronavirus Act – that the impacts were 'justified and a proportionate means' of protecting the public in the pandemic by 'increasing the capacity of public service systems and mitigating the spread of infection.' Its assessments stressed that most impacts would be temporary, spanning the duration of the pandemic and emergency situation, and many of the provisions, where possible, contain safeguards and mitigation measures to 'lessen the extent of any negative actual or perceived impacts.'[410] Unions and charities questioned whether government has broken equality law, by failing to uphold that legal duty, during the pandemic. [411] The Information Commissioner's Office (ICO) also wrote to

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[408] Legislation.gov.uk, 'The Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021', https://www.legislation.gov.uk/uksi/2021/582/pdfs/uksiem_20210582_en.pdf
[409] Department of Health & Social Care, 'Coronavirus bill: summary of impacts', https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts
[410] Department of Health & Social Care, 'Coronavirus Act 2020: the public sector equalities duty impact assessment', https://www.gov.uk/government/publications/coronavirus-act-2020-equality-impact-assessment/coronavirus-act-2020-the-public-sector-equalities-duty-impact-assessment
[411] 'Unions, women's groups and charities have today (Monday) called on the Equality and Human Rights Commission (EHRC) to urgently investigate whether the government has breached equality law during the pandemic', https://www.tuc.org.uk/news/unions-and-charities-call-ehrc-investigate-whether-government-has-broken-equality-law-during

the Government saying it must release documents relating to complying with its legal duty under equalities legislation.[412]

More generally, the Government also suggested it has been mindful of the desire to monitor the impact of the measures on people and society, remaining flexible so that they can adapt to new evidence and changes in risk. Where measures have been taken, the Government say they put them in place for as short a period as necessary, and often with the additional checks and balances of sunset clauses and fixed review points.[413]

However, the lack of impact assessments during the pandemic has also sparked criticism in Westminster. The House of Commons Treasury Committee, for instance, reported they were 'disappointed at the lack of analysis provided by the Treasury' as it gives the impression that 'the Government is making important decisions without proper regard to all their impacts, both on health and the economy', as well as resulting in the public being prevented from fully understanding both the reasons for and the impact of the restrictions imposed upon them. Accordingly, the Committee urged 'the Treasury to be more transparent about the economic analysis which it undertakes' to inform Government pandemic decisions – and to publish that analysis 'in a timely manner.' Furthermore, the Committee suggested the Treasury should 'provide rigorous analysis of future policy choices which quantifies the harms and benefits of each of the plausible range of alternative policies' because 'It has always been considered a good practice to publish an impact assessment for every measure that the Government proposes.'[414] In response, the Government maintained that it publishes a significant amount of analysis of the health, economic and social impact of Covid-19 measures, including the analysis underpinning the Roadmap out of lockdown,[415] although that matter is contested.

Measuring impacts and costs: will policies be deliverable or effective?

So fundamental were the government's missing cost-benefit analyses of the pandemic that the CRG MPs, who formed the only effective opposition to greater restriction, put the role of cost-

[412] Liberty, 'Government Told to Release Covid Documents After Liberty Transparency Battle', https://www.libertyhumanrights.org.uk/issue/government-told-to-release-covid-documents-after-liberty-transparency-battle/

[413] Department of Health and Social Care, 'One Year Report on the status on the non-devolved provisions of the Coronavirus Act 2020: March 2021', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978844/coronavirus-act-one-year-status-report-amended.pdf

[414] Treasury Committee, 'Economic impact of coronavirus: gaps in support and economic analysis', https://committees.parliament.uk/publications/4703/documents/47210/default/

[415] https://committees.parliament.uk/publications/5617/documents/55534/default/

benefit analyses centre-stage in their objectives. (In November 2020, the CRG was formed by a group of MPs opposed to England's national lockdown.)[416]

When the government published their cost-benefit report in November 2020 on the health, economic and social effects of Covid-19 and the approach to tiering,[417] MPs said the document failed to answer the CRG's demand 'for a full cost-benefit analysis of the damage the three-tier system will do to businesses and jobs on a regional basis.'[418] And in February 2021, members of the CRG welcomed calls for the government to ensure they complete cost-benefit analyses prior to a policy being introduced by demanding 'a new Public Health Act to "force the government to prove the proportionality" of future lockdowns.' According to Steve Baker of the CRG, such legislation would require ministers to 'weigh up the benefits and harms of each proposed restriction' relating to its impact on health, education and the economy.[419]

The CRG hopes to challenge scientific advice provided by medical experts and campaigned to defeat any attempt by the Prime Minister to extend the coronavirus lockdown – particularly when it was due to end on 2 December 2020. They campaigned to 'Undertake and publish full cost-benefit analysis of restrictions on a regional basis' and to 'End the monopoly on advice of government scientists'. They said, 'Lockdowns and restrictions cost lives, push death and suffering into the future and cause immense economic, social and non-COVID health damage'. The CRG highlighted how 'the first lockdown led to more cancer deaths, deteriorating mental health and many other social harms' – and that 'we must give equal regard to the most lethal killers we face today', such as dementia, mental health and the 'consequent mortality of falling GDP.' They also added:

> 'MPs must be in a position to assess the relative health implications on both sides of the argument of repeated restrictions with a view to removing them immediately if it cannot be proved that they are saving more lives than they cost.'[420]

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[416] A group including the MPs Mark Harper, Steve Baker, Sir Graham Brady, Adam Afriyie, Chris Green, Philip Hollobone, Sir Robert Syms, William Wragg, Dr Ben Spencer, Harriett Baldwin and Nus Ghani.

[417] HM Government, 'Analysis of the health, economic and social effects of COVID-19 and the approach to tiering', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/944823/Analysis_of_the_health_economic_and_social_effects_of_COVID-19_and_the_approach_to_tiering_FINAL_-_accessible_v2.pdf

[418] Andrew Woodcock, 'Coronavirus: Government paper offers no assessment of economic impact of restrictions on areas in different tiers', https://www.independent.co.uk/news/uk/politics/coronavirus-tiers-economy-impact-covid-b1764060.html

[419] Eleanor Langford, 'Lockdown-Sceptic MPs Call For New Laws To Prevent Coronavirus Restrictions Without Parliamentary Scrutiny', https://www.politicshome.com/news/article/coronavirus-lockdown-public-health-act-steve-baker-crg

[420] Jon Craig, 'Coronavirus: Scores of rebel Tory MPs launch anti-lockdown campaign group', https://news.sky.com/story/coronavirus-scores-of-rebel-tory-mps-launch-anti-lockdown-campaign-group-12129631

Parliament's observations on understanding impact

The parliamentary arguments on lockdown restrictions by the time of the ending of the second lockdown and the replacement of that system with local tiers contained many objections to the absence of cost-benefit analyses and impact assessments of policy on schools, families and businesses. The absence of balanced impact assessments were well acknowledged:

- On the day that Boris Johnson announced England's second national lockdown would end and be replaced with a local tier system, the senior Conservative MP Iain Duncan Smith questioned the 'quality of the advice being given to the Prime Minister'. He asserted that 'convincing evidence that these stringent restrictions should be implemented has not been produced', and was critical of the data used previously to justify restrictions. Duncan Smith questioned whether 'those advising the Government have any concept of the devastating consequences of such a proposal' – such as the delaying of non-Covid related health treatment, the collapsing of the hospitality sector and higher unemployment. As such, he called for 'a full and balanced assessment of the cost and potential damage to our country of such plans – before it is too late.'[421]

- A more in-depth cost-benefit analysis had been required. At a similar time, the MP Harriett Baldwin commented that whilst she had previously supported the lockdown on the basis that it would buy time for the government to improve test and trace and develop a strategy for living with the virus, she found:

  > 'There is no logic whatsoever in having a month of lockdown only for people to have to live under an even more severe set of restrictions afterwards. That's why we must see the evidence, the data and the cost-benefit analysis – published in full and on time – so that we can assess whether or not the current strategy is working, and make sure we know if we are being asked to vote for something with an end date and which will explicitly save more lives than it costs.'[422]

- Ahead of Boris Johnson's announcement of England's third national lockdown, the MP Philip Davies asked: 'Is there going to be a lockdown forever?', adding, 'We're in

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[421] Iain Duncan Smith, 'Lockdown in all but name is bitter blow for business', https://www.iainduncansmith.org.uk/news/lockdown-all-name-bitter-blow-business

[422] Heather Stewart, 'MPs' fury as 55m people in England face months in top tiers', https://www.theguardian.com/world/2020/nov/26/tough-sweeping-covid-rules-cover-99-of-population-in-england

perpetuity and bankrupting our companies for a virus that has a survival rate of 99.5 per cent. It's a one dimensional approach.'[423]

- Another MP, Karl McCartney, said that whilst he understood the threat of Covid-19 and the impact it was having on public services, he could not ignore 'the damaging consequences' of lockdowns – including 'the hugely negative implications for many individual's psychological well-being and economic security' and 'the mental well-being of school pupils'.[424]

- In a tweet on 6 January 2021, Stephen McPartland MP said he could not vote for England's third national lockdown because:

  > 'Adult and child mental health issues are still being forgotten along with supermarket workers, delivery drivers, emergency services, NHS, carers, teachers, postmen and millions of low paid people who are required to go to work.'[425]

- Anne Marie Morris MP expressed particular concern over the non-Covid health consequences another lockdown would have. She made the point that the government made the decision to impose a lockdown 'With so little analysis and so little data across all these issues', such as the 'missed hospital appointments' and 'the unseen mental health consequences.' And, as such, she feared a new lockdown 'will do more harm than good.'[426]

- Speaking in the House of Commons, the MP Andrew Rosindell argued that whilst we were constantly being told 'by the governing, scientific and media class, that we must shutdown our country, and that people must surrender their most basic freedoms, to save lives', 'the "shutdown" we are voting on today and the effects of these measures… may I fear, do more damage to the lives of the British people in the long term, than the pandemic itself.' Additionally, he referenced the WHO's Pandemic Influenza Risk Management Guidance suggesting that 'any emergency measures… be necessary, reasonable and proportional'. He feared the measures announced for a third lockdown 'are none of those things.' Accordingly, he argued 'there has to be balance and

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[423] Brad Deas, 'Shipley MP Philip Davies hits out over lockdown', https://www.thetelegraphandargus.co.uk/news/18986622.shipley-mp-philip-davies-hits-lockdown/

[424] Jack Lacey-Hatton, 'Lincoln MP explains tough decision after voting against coronavirus lockdown', https://www.lincolnshirelive.co.uk/news/local-news/lincoln-mp-responds-lockdown-vote-4864778

[425] Stephen McPartland, https://twitter.com/smcpartland/status/1346727320023920640?lang=en

[426] Daniel Clark, 'MP Anne Marie Morris refuses to support Lockdown 3', https://www.devonlive.com/news/devon-news/mp-anne-marie-morris-refuses-4857657

proportionality to the decisions we make, taking into account the long term consequences on the lives of the people we represent' because despite what the scientists recommend, they 'will never need to account for the effects of lockdowns on our constituents', but MPs will.[427]

- David Warburton was another MP who said he could not support the government's measures for a third national lockdown in England 'given the economic, social, health, livelihood, business, mental health costs, the suicides, unemployment, [and] insolvencies' which arise from a lockdown, as well as lockdowns being based upon data which he claimed 'is uncertain or unknown'. Warburton contended there must be 'a cost benefit analysis – which can allow us to make an informed decision' in order to balance the social and economic consequences of the restrictions 'against the likely lives saved from those same restrictions.' However, Warburton claims he was 'most concerned' as to why 'an alternative approach' to handling the pandemic' had not been embraced.[428]

- Why were restrictions not lifted when it was clear positive impacts were being shown to have occurred in the population? Restrictions were imposed in a matter of days, but when positive data demonstrated a lessening of fatalities, infections or hospitalisations, the restrictions would remain while only blunders, delays and inadequate actions would follow. For example, on the day Boris Johnson announced England's roadmap out of lockdown in February 2021, the MP Adam Afriyie demanded to know why – despite data showing the impact and success of the vaccines and the reduction in Covid-related deaths and hospitalisations – the programme was not being accelerated. Why were the government still 'talking about the R rate anymore?' As Afriyie put it, 'What has the R rate got to do with anything if all the vulnerable groups are protected and serious ill health and death is being avoided?'[429]

- The 'roadmap' was said to be 'a hammer blow to aviation, pubs, restaurants, hotels, gyms & pools, the arts and entertainment'.[430] For MP Steve Baker, 'it seems to be modelling not data driving decisions.' Accordingly, he persuasively called for the

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[427] Andrew Rosindell, 'Andrew Rosindell's speech on a third lockdown', https://www.rosindell.com/news/andrew-rosindells-speech-third-lockdown

[428] David Warburton, 'My Vote on the National Lockdown', https://www.davidwarburton.org.uk/news/my-vote-national-lockdown

[429] 'Covid-19, Volume 689: debated on Monday 22 February 2021', https://hansard.parliament.uk/Commons/2021-02-22/debates/E9089B82-E35E-4630-9CF1-9E2B0DFB2BAA/Covid-19#contribution-DF388D11-698D-4876-8A03-8C7A8DA7EFB7

[430] Steve Baker, https://twitter.com/SteveBakerHW/status/1363935530572988416

introduction of 'competitive expert advice with challenge and a new public health act to insist on regular, amendable motions and serious impact assessments.'[431] And the MP Mark Harper urged ministers to consider not just the scientific and medical advice, but also the economic and social consequences of their policies (such as the impact on students and the hospitality industry) in order to reach a balanced judgment about the right decisions for Britain.[432]

- Ahead of the Prime Minister's announcement of England's roadmap out of lockdown, the CRG sent a letter to Boris Johnson, 'calling on him to commit to a timetable for lifting coronavirus restrictions'. In the letter, the CRG stressed the importance of ending lockdown, pointing to the 'immense social and health damage' and the 'huge impact' lockdowns have on people's livelihoods. They were looking for restrictions to be justified through a cost-benefit analysis – with a roadmap asserting when they would be removed.[433] But the roadmap itself was 'far too slow', and the MP Anne Marie Morris questioned if the delay was proportionate to the risk presented from Covid – given that we have 'no impact statement on the adverse effects of lockdown itself'.[434]

- The balance of expected positive health outcomes resulting from restrictions compared to non-Covid health and mental well-being outcomes was making itself known to those in government through parliamentary proceedings, albeit with little effect. The impacts on those non-Covid outcomes were felt strongly across society as England entered into its third national lockdown.

Educational, schooling and disabilities impacts

Under lockdown and tiered restrictions, the various negative impacts on education and school attainment were continuously monitored but featured little in terms of weighing up the impact of restrictions. The odd move meant that after school closures for the vast majority of children had come into effect – originally announced on 18 March 2020 – separate analysis, for

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[431] Steve Baker, https://twitter.com/SteveBakerHW/status/1363935530572988416

[432] Press Association, 'Delay on lifting lockdown based on 'dodgy assumptions' – Tory MP Mark Harper', https://www.oxfordmail.co.uk/news/national/19110418.delay-lifting-lockdown-based-dodgy-assumptions---tory-mp-mark-harper/

[433] Press Association, 'Tory MPs tell Johnson to commit to lifting Covid restrictions by end of April', https://www.theguardian.com/world/2021/feb/13/tory-mps-tell-johnson-to-commit-to-lifting-covid-restrictions-by-end-of-april

[434] Anne Marie Morris, 'Anne Marie's Weekly Column: Lockdown roadmap', https://www.annemariemorris.co.uk/news/anne-maries-weekly-column-lockdown-roadmap

example, on 7 April by a community of scientists, had questioned the school closures impact.[435] The University College London team said keeping pupils off has little impact, even with other lockdown measures. Their research, published in *The Lancet Child and Adolescent Health*, looked at 16 studies – some based on the spread of coronavirus, and others on seasonal flu and the 2003 Sars outbreak. The findings suggested recent modelling studies of Covid-19 predict that school closures alone would prevent only two to four per cent of deaths, many fewer than other social distancing interventions. One of the research authors, Professor Russell Viner, said at the time: 'Data on the benefit of school closures in the coronavirus outbreak is limited, but what we know shows that their impact is likely to be only small.' The researcher considered the costs of national school closures to be high as children's education would be damaged and their mental health may also suffer while family finances are affected.

Reported examples of impacts on education and schools

- During the three lockdown periods and the two periods of school closures, 'there is evidence of sizable education losses in all four nations of the UK.' And 'Pupils from the poorest homes experienced higher learning loss in all four nations.'[436]
- During one calendar year, there are 190 classroom teaching days, but from March 2020 to April 2021, 'Based on the nations' attendance policies, the following maximum number of classroom days were lost over one calendar year: 110 days (England); 119 days (Northern Ireland); 119 days (Scotland); 124 days (Wales).'[437]
- 'Pupils from the bottom fifth of incomes experience higher learning loss than those from the top fifth. In England, for example, during the 2021 school closures, the poorest pupils missed out on a third of their learning (34.9 percent) while the richest pupils only missed out on a quarter of their learning (24.4 percent).'[438]

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[435] Michelle Roberts, 'Coronavirus: Scientists question school closures impact', https://www.bbc.co.uk/news/health-52180783

[436] Lee Elliot Major, Andrew Eyles and Stephen Machin, 'Learning loss since lockdown: variation across the home nations', https://cep.lse.ac.uk/pubs/download/cepcovid-19-023.pdf

[437] Lee Elliot Major, Andrew Eyles and Stephen Machin, 'Learning loss since lockdown: variation across the home nations', https://cep.lse.ac.uk/pubs/download/cepcovid-19-023.pdf

[438] Lee Elliot Major, Andrew Eyles and Stephen Machin, 'Learning loss since lockdown: variation across the home nations', https://cep.lse.ac.uk/pubs/download/cepcovid-19-023.pdf

- 'Most students appear to have experienced learning losses to some degree, and some have experienced severe learning losses. Reports often indicate that maths and literacy skills are most notably behind. Practical skills are also reported to have suffered'.[439]
- 'In general, disadvantage and deprivation appear to be most associated with less effective learning. Teaching and learning for primary-aged students also appear to have been negatively impacted.'[440]
- At the end of 2019/20 school year, nearly all teachers surveyed reported that 'their students were behind where they would expect them to be in their curriculum learning…At that stage, on average, teachers estimated students to be 3 months behind.'[441]
- Primary school leaders were 'most likely to report significant learning loss, with the youngest pupils apparently most negatively affected by the pandemic.'[442]
- Teacher estimates of lost learning suggest that 'students in schools serving more deprived communities have fallen further behind their peers.'[443]
- Deprivation and disadvantage seem to be most associated with poorer learning experiences and learning losses during the pandemic, with students in the poorest families, whose parents have lower levels of education, those who are eligible for FSM, and pupil premium students, being worse affected compared with their counterparts.'[444]
- Evidence from 10 studies when assessed during the autumn term 2020: 'primary school students were generally a month or so behind expectations' and disadvantaged primary school students were 'disproportionately behind expectations'.[445]

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[439] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[440] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[441] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[442] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[443] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[444] Emma Howard, Aneesa Khan and Charlotte Lockyer, 'Learning during the pandemic: review of research from England' https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-review-of-research-from-england

[445] Paul E. Newton, 'Learning during the pandemic: quantifying lost learning', https://www.gov.uk/government/publications/learning-during-the-pandemic/learning-during-the-pandemic-quantifying-lost-time--2

During this pandemic, the concern for our safety of our *children* turned into – as the primary school teacher Josephine Hussey suggested – the safety of our *adults* in which the children disappeared.[446] After over a year of disruption to schools, Hussey finds that at each moment, there was a frenzied media discussion and a push by the unions to put more safety measures in place or keep schools closed. It not only undermined the community feeling of the school, its children and parents that 'we are all in this together', since the child saw schooling as an individual act to be completed at home, while the teacher focused only on the job of planning and writing feedback and sending it remotely, hoping that it was all being read and acted on.

According to research by Ofsted, published in November 2020, primary school children 'had learned little during the first national lockdown' – with the majority of primary school leaders saying pupils had suffered learning losses in many subjects, and several other leaders saying pupils had either remained at the same level they were at before March or had fallen behind. Some leaders quantified this in terms of pupils being six months behind where they should have been.

Younger pupils had been most negatively affected. Key Stage 1 pupils' social and communication skills, listening skills, speech, phonic knowledge and gross motor skills had been negatively impacted; and Reception children were not as ready for school as they usually are.

For Year 2 pupils in autumn 2020, their attainment in reading and mathematics was 'significantly lower' in comparison 'to a standardised sample from in 2017; representing a Covid-19 gap of around two months' progress.' In addition, pupils who were eligible for free school meals were disproportionality impacted by the pandemic – with the 'disadvantage gap' in reading and mathematics being 'around seventh months' progress, which represents a widening as compared to Key Stage 1 in 2019.'[447]

Primary school leaders expressed that 'pupils had fallen behind in mathematical vocabulary, place value, recall, number, fluency and data handling.' There was even greater concern expressed regarding literacy, with pupils experiencing losses in vocabulary; reading; phonic knowledge, grammar, punctuation, spelling and handwriting; and 'pupils' skills of summarising, their sentence construction and their writing stamina' also being impacted.[448]

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[446] People's Lockdown Inquirer, 'What Price Lockdown? We Asked People On The Front Line', https://peopleslockdowninquiry.co.uk/wp-content/uploads/2021/06/PLI_online.pdf

[447] Susan Rose, Liz Twist, Pippa Lord, Simon Rutt, Karim Badr, Chris Hope and Ben Styles, 'Impact of school closures and subsequent support strategies on attainment and socio-emotional wellbeing in Key Stage 1: Interim Paper 1', https://educationendowmentfoundation.org.uk/public/files/Publications/Covid-19_Resources/Impact_of_school_closures_KS1_interim_findings_paper_-_Jan_2021.pdf

[448] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

For secondary school pupils, pupils in all year groups had fallen behind in a range of subjects. There was concern around pupils' 'basic mathematical skills', as well as specific aspects of maths, such as fractions, and related skills – such as problem solving. 'Basic literacy' had become leaders' greatest concern with regard to English – and again, spelling, grammar, punctuation and spoken English were all emerging issues.' The lack of access to certain equipment during the first lockdown had also affected learning in other subjects, such as science and music.[449]

The Committee of Public Accounts[450] concluded that there was 'a particularly detrimental impact on children with special educational needs and disabilities [SEND], in terms of both their education and their health' due to the lack of support. Accordingly, the Committee recommend that the Department for Education 'work with the Department of Health and Social Care to identify the specific actions needed to help children with SEND recover from the damage caused during the pandemic.'

Another conclusion was that as access to IT equipment is 'vital for pupils', the Department for Education was encouraged to set out a plan – which should 'make clear the roles of the Department, local authorities and schools, and set out what funding will be available to maintain and replace equipment' – 'for how it will ensure that all vulnerable and disadvantaged children have access to IT equipment to support their learning at home.'

What about the impact of lockdown on the disabled? During the pandemic, participants of a study by the Cabinet Office Disability Unit felt higher levels of 'shame and guilt about their 'disabled' identities and the needs that accompany them'. Vulnerability was particularly felt 'when receiving social and healthcare services during the pandemic'. And lockdown and other restrictions gave some the feeling 'that their needs do not matter'.[451]

Research by the Council for Disabled Children found that for young disabled people, 'the theme of missing family and friends came out as one of the primary challenges of the COVID period'.[452] The abrupt loss of routine and structure at school and access to clubs and friends has also had a

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[449] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf
[450] Committee of Public Accounts, 'COVID-19: Support for children's education', https://publications.parliament.uk/pa/cm5802/cmselect/cmpubacc/240/24005.htm#_idTextAnchor002
[451] Cabinet Office Disability Unit, 'The lived experience of disabled people during the COVID-19 pandemic', https://www.gov.uk/government/publications/the-lived-experience-of-disabled-people-during-the-covid-19-pandemic/the-lived-experience-of-disabled-people-during-the-covid-19-pandemic
[452] Council for disabled children, 'Lessons learnt from lockdown: The highs and lows of the pandemic's impact on disabled children and young people', https://councilfordisabledchildren.org.uk/sites/default/files/uploads/attachments/Lessons%20Learnt%20From%20Lockdown_0.pdf

significant impact on the mental health and emotional wellbeing of children and young people with SEND and their families.

By extension of the educational challenge, very little attention was paid in policy as to how lockdown increased the overall care burden for women and families.[453] The economy slowed during lockdowns not only because people were unable to go into workplaces, but also because many families had to educate their children with a lack of institutional support. This 'care economy' is a key feature in the paid economy, and was predominantly done by women before the pandemic. However, emerging research strongly suggests the pandemic has dramatically increased this burden for women.

Economic lockdowns: measuring the impact

When considering economic data, we know that various ONS, Office for Budget Responsibility (OBR) and think-tank snapshots depicted the negative impact, if not meltdown, of the UK economy. Were those initial dire warnings throughout 2020 (set out below) not enough to justify a more thorough impact assessment of restrictions by a team of civil servants within HM Treasury and the BEIS?

Impact of lockdown on the economy

Major pandemic impacts
- 'During the first lockdown, UK GDP was 25% lower in April 2020 than it was only two months earlier'.[454]
- Economic activity then picked up during spring and summer as parts of the economy began to reopen.[455]
- The lockdown in November, again, lead to another monthly fall in GDP.[456]

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[453] Kate Power, 'The COVID-19 pandemic has increased the care burden of women and families', https://www.tandfonline.com/doi/full/10.1080/15487733.2020.1776561
[454] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/
[455] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/
[456] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

- The tighter restrictions in December, followed by another lockdown in January, resulted in yet another fall in GDP.[457]
- Overall, the UK saw its GDP decline by 9.8 per cent in 2020 – 'the steepest drop since consistent records began in 1948 and the most in over three hundred years on some estimates.'[458]
- GDP fell by 2.9 per cent in January.
- 'Even when the economic shock of the pandemic does eventually dissipate, the crisis may result in permanent damage, or "scarring", to the economy.'[459]
- The OBR estimates this 'will lower the level of GDP by 3% compared to what it would have been without the pandemic, while the Bank of England's more recent estimate is just over 1%.'[460]

Present impacts in 2021
- England's easing of all coronavirus restrictions on 19 July 2021 contributed to a GDP growth of 0.1 per cent between June 2021 and July 2021; however, all components of GDP remained lower than their February 2020 level. In total, GDP was 2.1 per cent below its level in February 2020 in July 2021.[461]
- 'Monthly services output remained broadly flat in July 2021 leaving it 2.1% below its February 2020 level; the sectors providing the strongest positive growth were information and communication (contributing 0.14 percentage points of positive growth to GDP) and finance and insurance (contributing 0.12 percentage points of positive growth to GDP), though these were offset by a fall in the professional, scientific and technical activities sector (contributing 0.19 percentage points of negative growth to GDP).'[462]
- 'The fastest growing service industry was air transport, which increased by 118.4%'. But 'output was still 77.2% below its February 2020 level'.[463]

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[457] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

[458] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

[459] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

[460] House of Commons Library, 'Coronavirus: Economic impact', https://commonslibrary.parliament.uk/research-briefings/cbp-8866/

[461] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021

[462] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021

[463] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021

- 'Monthly manufacturing remained broadly flat in July 2021 leaving it 2.3% below its February 2020 level'.[464]
- 'Monthly construction output fell by 1.6% in July 2021; anecdotal evidence was received from businesses suggesting that price increases and supply chain issues were the main reasons for the decline.'[465]
- 'Services output in July 2021 remained 2.1% below its February 2020 level.'[466]
- 'Production in July 2021 was 2.1% below its February 2020 level.'[467]
- Of manufacturing's 13 subsectors, nine 'displayed a negative contribution to growth and the manufacturing sector as a whole saw output remain broadly flat. Manufacture of transport equipment provided the strongest positive contribution, however manufacturing output remained 2.3% below its February 2020 level'.[468]

We might also consider the following specific impacts on the hospitality sector – as indicated by both the ONS and industry information – by asking why more thorough impact assessments of our economic restrictions by teams within BEIS would not have led government to balancing SAGE advice with the negative economic impacts.

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[464] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021
[465] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021
[466] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021
[467] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021
[468] ONS, 'Coronavirus and the impact on output in the UK economy: July 2021', https://www.ons.gov.uk/economy/grossdomesticproductgdp/articles/coronavirusandtheimpactonoutputintheukeconomy/july2021

Impacts on hospitality

Major pandemic impacts

- 'Hospitality has been hit hard by the coronavirus (COVID-19) pandemic and the impact has been uneven'.[469]
- The peak of the hospitality sector's economic downturn was in April 2020 – when 'economic output in the food & accommodation sector was 90% below pre-pandemic levels (February 2020).' [470]
- July saw dining able to resume, yet 'output in the sector was still down 44% compared to February.' [471]
- The Government's Eat Out to Help Out Scheme helped the sector to boost its economic activity – with a '71% growth in August compared to July. [472]
- However, compared to February, output was still down by 14 per cent in August 2020. Further restrictions in September again saw a decline in output, and 'In January 2021, output in the sector was 67% below pre-pandemic levels (Feb 2020).'[473]
- In April 2020, the newly launched UKHospitality Quarterly Tracker revealed that 'The UK hospitality sector saw sales decline 21.3% in the first quarter of 2020' – with the drop in trading being concentrated in March. [474]
- The subsequent April 2021 edition of the UKHospitality Quarterly Tracker showed that between April 2020 – March 2021, the hospitality sector lost £80.8 billion-worth of sales (down from £126.8 billion in the previous 12 months to £46 billion).[475]

[469] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[470] Georgina Hutton and Niamh Foley, 'Hospitality industry and Covid-19', https://researchbriefings.files.parliament.uk/documents/CBP-9111/CBP-9111.pdf

[471] Georgina Hutton and Niamh Foley, 'Hospitality industry and Covid-19', https://researchbriefings.files.parliament.uk/documents/CBP-9111/CBP-9111.pdf

[472] Georgina Hutton and Niamh Foley, 'Hospitality industry and Covid-19', https://researchbriefings.files.parliament.uk/documents/CBP-9111/CBP-9111.pdf

[473] Georgina Hutton and Niamh Foley, 'Hospitality industry and Covid-19', https://researchbriefings.files.parliament.uk/documents/CBP-9111/CBP-9111.pdf

[474] Chris Banks, 'New Hospitality tracker sees first quarter sales drop 21.3%', https://www.ukhospitality.org.uk/news/504592/New-Hospitality-tracker-sees-first-quarter-sales-drop-21.3.htm

[475] Pernille Thomsen, 'Hospitality sector loses £80.8bn of sales in 12 months of COVID-19', https://www.ukhospitality.org.uk/news/563270/Hospitality-sector-loses-80.8bn-of-sales-in-12-months-of-COVID-19.htm

- 'The drop of £80.8bn is equivalent to around £220m of sales lost every day – or more than £9m every hour.'[476]
- 'The Market Recovery Monitor from CGA and AlixPartners shows that around 12,000 licensed premises closed in Britain between January 2020 and March 2021.'[477]
- In the hospitality and tourism sectors, it was reported in June 2020 that only 11 per cent of businesses 'are currently able to operate at normal levels, with 89% currently operating at a significantly reduced level or being closed.' [478]

Present impacts in 2021

- 'Pubs and nightclubs have been one of the worst affected sub-sectors; turnover in May 2021 was 39% lower than May 2019 and has consistently remained below 2019 levels since the pandemic began.'[479]
- Whilst consumer spending in the sector increased in May 2021, it 'remains at less than 70% of pre-pandemic levels; a similar picture is seen in turnover - in May this remained one-quarter lower than 2019 levels.'[480]
- 'Spending by businesses in the hospitality sector has seen smaller increases compared with consumer spending in May 2021; payments to suppliers from food and drink businesses have remained around half of pre-pandemic levels.'[481]
- 'Confidence of business survival in the hospitality sector started to increase in May 2021 but remains below the all-sector level.' [482]

[476] Pernille Thomsen, 'Hospitality sector loses £80.8bn of sales in 12 months of COVID-19', https://www.ukhospitality.org.uk/news/563270/Hospitality-sector-loses-80.8bn-of-sales-in-12-months-of-COVID-19.htm

[477] Pernille Thomsen, 'Hospitality sector loses £80.8bn of sales in 12 months of COVID-19', https://www.ukhospitality.org.uk/news/563270/Hospitality-sector-loses-80.8bn-of-sales-in-12-months-of-COVID-19.htm

[478] All Party Parliamentary Group for Hospitality and Tourism, 'Pathways to Recovery', https://www.ukhospitality.org.uk/page/PathwaystoRecovery

[479] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[480] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[481] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[482] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

- 'Job vacancies in the hospitality sector have seen large increases and are higher than pre-pandemic levels; however, in June 2021, the number of employees within the sector remained 11% below February 2020 levels.' [483]
- 'Overall, turnover for the hospitality sector has remained below its 2019 levels throughout the pandemic, with May 2021 25% lower than May 2019.' [484]

From mental health to cancer referral: understanding measured impacts

Throughout the pandemic, but less so in the immediate aftermath of lockdown restrictions in 2020, very high-profile concerns had explicitly addressed the mounting mental health damage to the population resulting from lockdown restrictions.[485] Several examples of those impacts on mental health and anxiety have been set out below.

On the day of the 2021 roadmap announcement, Sir Charles Walker MP expressed his concern over the impact of lockdown on people's long-term mental health and the lack of focus which this is given by the government and scientists. He asked:

> '…did anyone in the room ask, "Is what we are doing ethical?" Did the Secretary of State ask, "Is this ethical?" Did the chief medical officer ask, "Is this ethical?" Did anyone—did a voice at SAGE—ask, "Is this ethical?" Did they ask, "Is it ethical to create a level of fear that will push many people to the very edge of what they can bear, or over that edge?" Did they ask, "Is it ethical for us to embark on a strategy that will leave many of our fellow citizens debilitated with fear, anxiety and worse for years to come, or perhaps a lifetime?'[486]

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[483] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[484] ONS, 'Coronavirus and its impact on UK hospitality: January 2020 to June 2021', https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/articles/coronavirusanditsimpactonukhospitality/january2020tojune2021

[485] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[486] Sir Charles Walker, 'Covid-19: Road Map', https://www.charleswalker.org.uk/news/covid-19-road-map

Examples of mental health and anxiety impacts on students and general population

Impacts on students

- Anxiety emerged as a challenge for both primary and secondary school students as a consequence of the coronavirus pandemic.[487]
- Pupils in Years 11, 12 and 13 were particularly anxious about the uncertainty surrounding exams.[488]
- Anxiety was having a greater impact on students with special educational needs and/or disabilities (SEND), as well as the anxiety of parents being transferred onto their children.[489]
- Some secondary school leaders had seen an increase in eating disorders amongst students.[490]
- Many secondary school leaders expressed concern over the 'social and emotional impact that the time out of school had had on their pupils with SEND.'[491]
- In October 2020, 50 per cent of students felt lonely daily/weekly – this was compared to only 39 per cent in May 2019.[492]
- 58 per cent of students felt their mental health had become worse due to the pandemic.[493]

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[487] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[488] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[489] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[490] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[491] Ofsted, 'COVID-19 series: briefing on schools, November 2020', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943732/COVID-19_series_briefing_on_schools__November_2020.pdf

[492] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

[493] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

- 52 per cent of students described their current mental health and well-being as worse than it was before the pandemic.[494]
- '57% of students reported that their well-being and mental health had become slightly or much worse since the start of the autumn term'. [495]
- Students 'reported lower levels of life satisfaction, life worthwhile and happiness, and higher levels of anxiety, compared with the general population, as reported in the Opinion and Lifestyles Survey (OPN) at a similar point in time.'[496]

Present impacts on mental health of the general population

- Since March 2020, the general trend is that UK adults have become less able to cope with the stress caused by the pandemic.[497]
- The percentage of people who said they were coping has fallen 'slowly and steadily' (from 73 per cent in April 2020 to 62 per cent in June/July 2021).[498]
- About one third of those with a pre-existing mental health condition or a long-term physical health condition were less likely to report that they were coping well.[499]
- Older adults are now struggling more now than they were at the beginning of the pandemic (from 76 per cent reporting they were coping well in March 2020, to 60 per cent in June/July 2021).[500]
- 'Those with a pre-existing mental health diagnosis are also recording higher levels of anxiety and worry (51%)'.[501]

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[494] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

[495] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

[496] ONS, 'Coronavirus and the impact on students in higher education in England: September to December 2020', https://www.ons.gov.uk/peoplepopulationandcommunity/educationandchildcare/articles/coronavirusandtheimpactonstudentsinhighereducationinenglandseptembertodecember2020/2020-12-21

[497] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th -june-%E2%80%93-2nd-july-2021-0

[498] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0

[499] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0

[500] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0

[501] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0

- '[S]uicidal thoughts have become more prevalent across the year and that they are increasingly common amongst our most vulnerable groups, despite the easing of restrictions'.[502]
- In April 2020, eight per cent of UK adults surveyed said they had had thoughts/feelings of suicide during the previous two weeks. 'This rose to 13% in February 2021 and has only decreased by 1%, to 12%, in June/July 2021'.[503]

Even if government had been prepared to set aside those concerns, we would also have to consider all the other health impacts, notably for cancer patients and their referrals. In estimating the impacts on cancer deaths and treatments, the UK may suffer 10,000 additional deaths from cancer as a result of the coronavirus pandemic, research at the University of College London has suggested.[504] One report has also suggested it could take over a decade to clear the cancer treatment backlog in England.[505] The list below describes some of the impacts that have been reported throughout the pandemic.

Impacts on cancer patients & referrals

- Estimates from the BMA show that between April 2020 and March 2021 there were '3.37 million fewer elective procedures' and '21.4 million fewer outpatient attendances.'[506]
- The number of patients waiting over 18 weeks for treatment increased to 1.85 million in August 2021.[507]
- '[T]here is concern that some patients were avoiding seeking care from A&E even when suffering life-threatening symptoms.'[508]

[502] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0
[503] Mental Health Foundation, 'Wave 11: 18th June – 2nd July 2021', https://www.mentalhealth.org.uk/research-and-policies/wave-11-18th-june-%E2%80%93-2nd-july-2021-0
[504] Neil Murphy, 'UK could suffer 10,000 extra cancer deaths due to Covid pandemic', https://www.thenationalnews.com/health/2021/09/21/uk-could-suffer-10000-extra-cancer-deaths-due-to-covid-pandemic/
[505] BBC News, 'Covid: Cancer backlog could take a decade to clear', https://www.bbc.co.uk/news/health-58670553
[506] BMA, 'Pressure points in the NHS', https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/pressure-points-in-the-nhs
[507] BMA, 'Pressure points in the NHS', https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/pressure-points-in-the-nhs
[508] BMA, 'Pressure points in the NHS', https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/pressure-points-in-the-nhs

In October 2020, Macmillan published a report *The Forgotten 'C'?: The impact of Covid-19 on cancer care* – in which they highlight the negative impacts the coronavirus pandemic had on cancer care, including:

- Estimates there were around 50,000 'missing' cancer diagnoses in the UK.[509]
- Statistics for urgent referrals in England for August 2020 'show activity is still 11% behind 2019 levels, with each month below pre-pandemic activity levels continuing to add to the backlog.'[510]
- Starting 'first treatment' statistics in England for August 2020 'show activity is still 18% behind 2019 levels, with each month below pre-pandemic levels continuing to add to the backlog.'[511]
- 'More than 650,000 people with cancer in the UK (22%) have experienced disruption to their cancer treatment or care because of Covid-19... For around 150,000 people this included delayed, rescheduled or cancelled treatment. Of these, more than half (57%) told us they were worried that delays to their treatment could affect their chance of survival.'[512]
- Around half of those currently having cancer treatment experienced disruption because of the pandemic, including: 29 per cent of people 'having treatment have had at least one test, scan or treatment delayed or rescheduled'; eight per cent 'have had to travel to a different hospital than usual for their care'; six per cent 'have had a test, scan or treatment cancelled'; and 17 per cent 'have had to go for a test, scan or treatment on their own against their wishes.'[513]
- '90,000 people living with cancer in the UK... had experienced possible symptoms of their cancer getting worse or coming back' but had not told their GP/healthcare team due to fear of catching Covid-19 or not wanting to add pressure on the NHS.[514]
- A study by 'DATA-CAN and University College London estimated that the pandemic could result in additional 6,270 deaths over the next 12 months in people newly diagnosed with

[509] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[510] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[511] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[512] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[513] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[514] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf

cancer. This number rises to an estimated additional 17,915 additional deaths taking into account all people currently living with cancer.'[515]

- Nine per cent of respondents to Macmillan's 'survey who had been diagnosed with cancer but not yet started treatment said their cancer had progressed or their symptoms had got worse as a result of the coronavirus disruption.'[516]

- People who are living with cancer 'whose treatment has been delayed or cancelled are significantly more likely to be feeling stressed, anxious or depressed because of Covid-19 than those whose care hadn't been disrupted (41% versus 25%).'[517]

Continuing impact on cancer treatments/deaths

- Cancer screening: Compared to June 2019, the number of patients starting cancer treatment having been diagnosed through screening in England was 14 per cent higher in June 2021. 'Numbers have been recovering fairly steadily since the worst point in July 2020, and are now exceeding pre-pandemic levels for England.'[518]

- Treatment waiting times: Since May 2020, the 93 per cent target for patients to be seen by a specialist consultant within two weeks of an urgent GP referral has been unmet.[519]

The poor outcomes and mounting costs at several stages during the pandemic should have been visible to ministers and advisers in government. In March 2021, Christopher Snowdon of the Institute for Economic Affairs (IEA) called for the government to move its roadmap out of lockdown forward as we were 'in a far better place than anybody expected in January'. The number of positive tests and hospitalisations were declining, as well as most adults having had at least one dose of the vaccine and many more having natural immunity. Our predicament was such that 'Every extra day of lockdown is producing diminishing returns and mounting costs.' Given the impact of the vaccines at that stage, 'the virus no longer has a fatality rate that can justify bringing the country to a standstill', according to Snowdon. But restrictions regulation worked only one way – they could be imposed within minutes but only relaxed after months.

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[515] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[516] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[517] Macmillan Cancer Support, 'The forgotten 'C'?: The impact of Covid-19 on cancer care', https://www.macmillan.org.uk/assets/forgotten-c-impact-of-covid-19-on-cancer-care.pdf
[518] Cancer Intelligence Team, 'Evidence of the impact of COVID-19 across the cancer pathway: Key Stats', https://www.cancerresearchuk.org/sites/default/files/covid_and_cancer_key_stats_august_2021.pdf
[519] BMA, 'Pressure points in the NHS', https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/pressure-points-in-the-nhs

Snowdon also criticised SAGE, claiming that in January 2021 they wanted lockdown to remain for six to nine more months, and so:

> 'Although Boris Johnson promised to base policy on data rather than dates, SAGE turned this into a one-way ratchet by concocting a rule that says it takes four weeks to evaluate the data and another week to act upon it. This concept was notable by its absence last year, when restrictions were being introduced on an almost weekly basis and it seems to have been invented for the sole purpose of keeping the roadmap to a snail's pace.'[520]

Writing during the third lockdown in England, Victoria Hewson at the Institute for Economic Affairs (IEA) summed up what lay at the heart of many of those arguments when saying 'that the Government has forgotten that freedom is (or used to be) our default setting, and any restrictions need to be justified.' Instead, she states the government has kept restrictions in place 'until ministers are satisfied that there is no risk'. Throughout the pandemic, she claims, it has been 'more like risk aversion and politics over cost/benefit analysis and liberty.'[521] The way in which the country strikes the balance must surely revert back to enabling liberties and building a knowledge of impacts over risk-aversion and the 'government knows best' approach, so as to return to a system which encourages personal responsibility.

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[520] Christopher Snowdon, 'The data is clear: the Government must move the lockdown roadmap forward', https://capx.co/the-data-is-clear-the-government-must-move-the-lockdown-roadmap-forward/
[521] Victoria Hewson, 'Ministers have forgotten that freedom is our default setting, not a privilege', https://capx.co/ministers-have-forgotten-that-freedom-is-our-default-setting-not-a-privilege/

6. Making Cabinet and its committees work effectively

Under our constitution, the government is distinct from parliament and is said to consist of the Prime Minister, the Cabinet and junior ministers, supported by teams of impartial and non-political civil servants working in government departments. The Government are responsible for running the country. The Prime Minister chooses his favoured party members to work in the Government with him – as Cabinet ministers and junior ministers. They therefore take responsibility for the policies of the government. Parliament's separate role is then to hold Government – and therefore Cabinet decision-making – to account, and is based on principles of openness and transparency, which it responds to by questioning ministers and requesting information.

What did a search of the Government records on Covid-19 tell us about their approach to Cabinet?

Although we sometimes see Cabinet as a 'rubber stamp', major Covid policies were cleared by Cabinet throughout the pandemic. Moreover, the role of Cabinet seems often to be proportionately referenced by ministers in their regular government communications. As a helpful representative survey of what all government communications were declaring in relation to Cabinet, it can be useful to observe what happens when we look through all the government communications at www.gov.uk online. If we confine all our searches to certain subjects – Brexit, Defence, Covid, and so forth – and search only for references to 'Cabinet', we find that government Covid communications come back with a reasonably proportionate number of references (three per cent) to 'Cabinet'. In contrast, government Brexit communications come back with the greatest amount of references (four per cent) to 'Cabinet'.

Number of times (%) Government communications refer to 'Cabinet' on various issues

Brexit	Defence and armed forces	Health and social care	Environment	Covid-19
102/2367 (4%)	221/11914 (2%)	229/22386 (1%)	346/27963 (1%)	139/4854 (3%)

Source: https://www.gov.uk/search/all?order=relevance

The above finding does not mean that a great deal of groupthink has not developed in the modern Cabinet system during the pandemic. Certainly, Cabinet did meet, but did it work effectively? Two academic experts in politics and political science, Dennis C Grube and Anna Killick, suggest in one research paper unrelated to the pandemic that the structures and practices of modern Cabinet government have increased the likelihood of 'groupthink' occurring. They say the combination of increased centralisation of power and a presidential focus on the Prime Minister has coincided with decreased opportunities for 'challenge' within the Cabinet process. It is found the personal attitude of the Prime Minister towards conflict can govern the shape of decision-making processes. That attitude can interact with Cabinet structures in ways that can discourage a culture of challenge.[522]

Groupthink can often emerge, they argue, in crisis situations, where the presentation of a united front is seen as important. In that situation, voters look for clear, unambiguous decision-making as marking out signs of strong and decisive leadership. The flipside of groupthink, they show, is although there may be a unified, predictable policy emerging from the often conflictual and erratic corridors of power, this has become less important than the likelihood that this policy is seriously flawed in its assumptions and reasoning. A core dilemma in groupthink in Cabinet decision-making is that the apparent stability and unity of purpose that accompanies it brings political dividends, but is likely to lead to potentially imperfect policy outcomes. The difficulty it leaves the Prime Minister with is having to decide between good politics and good policy.[523]

Grube and Killick argue that the suppression of challenge in the cabinet process has accelerated in the last 30 years. A Prime Ministerial personal antipathy to conflict among ministers such as that defined under Blair was important. His top circle sought to suppress and manage conflict, with the broader target to modernise and centralise decision-making. The flipside of such practices being that they 'undermined the capacity to grow a 'culture of challenge' within Cabinet processes. The Blair government, as Chilcot and others went to great lengths to demonstrate, was clearly prone to groupthink.[524]

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[522] Dennis C Grube and Anna Killick, 'Groupthink, Polythink and the Challenges of Decision-Making in Cabinet Government', https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsab047/6343142?login=true#283986573
[523] Dennis C Grube and Anna Killick, 'Groupthink, Polythink and the Challenges of Decision-Making in Cabinet Government', https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsab047/6343142?login=true#283986573
[524] Dennis C Grube and Anna Killick, 'Groupthink, Polythink and the Challenges of Decision-Making in Cabinet Government', https://academic.oup.com/pa/advance-article/doi/10.1093/pa/gsab047/6343142?login=true#283986573

The pandemic has seen the emergence in Cabinet of those termed 'hawks' – that is, those who in favour of lockdowns and tougher restrictions, such as the Prime Minister himself and the former Health Secretary, Matt Hancock – and those who are 'doves', such as the Chancellor, Rishi Sunak – that is, those who believe that avoiding lockdown measures and thereby protecting the economy and other facets of society is the best approach.[525] This division of opinion has caused an apparent split in the Cabinet Office when key decisions have had to be made over the course of the pandemic, even during the early stages.

For example, in early April 2020, when Dominic Raab made the announcement that the country would be required to live under lockdown for a further three weeks, rumours began to emerge of a disagreement within the Cabinet over whether restrictions should be lifted on 8 May, or if they should instead remain in place until June. It was believed that some ministers were unhappy with no debate occurring to determine which measure to take.[526] The lead up to England's second national lockdown too saw Boris Johnson struggling to resolve the split in the Cabinet over how fast restrictions should be imposed, as well as the severity of such restrictions, in order to balance limiting the number of Covid cases and the impact on the economy. Rishi Sunak was warning the Prime Minister of the job losses that would result from any new measures, and so insisted that businesses should be protected, whilst Matt Hancock – a 'hawk' – wanted quick action to prevent a purported surge in the death rate from Covid-19.[527] The delay to 'freedom today' (the end of England's third national lockdown) also demonstrated the division of opinions within the Cabinet – with Cabinet minister Jacob Rees-Mogg voicing his opposition to the extension, saying:

> 'You can't run society just to stop the hospitals being full, otherwise you'd never let us get in our cars and drive anywhere or do any of the other things that people want to do, so there has to be some proportionality.'

Nonetheless, the Prime Minister stressed the delay was necessary to ensure more people had the opportunity to get their vaccine before the country re-opened; and Matt Hancock supported the Prime Minister, claiming the delay would allow 'thousands of lives' to be saved.[528] The rift was also seen when ministers sought to save the 2021 summer holiday season through easing travel restrictions for a number of tourist hotspots as ministers became divided as to whether extra freedoms should be granted to those who had received both doses of their Covid vaccine. It was understood that some Cabinet figures were concerned this would lead to

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[525] https://www.theweek.co.uk/108311/cabinet-split-lockdown-hawks-among-boris-johnsons-top-team
[526] https://www.mirror.co.uk/news/politics/ministers-torn-over-lifting-lockdown-21887162
[527] https://inews.co.uk/news/politics/boris-johnson-second-lockdown-when-rishi-sunak-matt-hancock-654523
[528] https://www.mirror.co.uk/news/politics/breaking-mps-vote-extend-covid-24335153

people rushing to receive their second dose, and therefore put a strain on supplies.[529] And most recently, the Cabinet became split on the proposal to introduce vaccine passports for nightclubs and large venues. The proposal was not supported by the majority of ministers and was deemed to be 'unworkable'. Yet Michael Gove – who was chairing the Cabinet meeting on this issue – decided to 'go with the minority view', and shortly after the meeting, Boris Johnson announced his intention 'to make full vaccination the condition of entry to nightclubs and other venues where large crowds gather' by the end of September.[530] After months of uncertainty, the new Health Secretary, Sajid Javid, effectively ditched those plans.[531] Interestingly, Javid has proposed some policy developments which suggest a cautious lessening of the stranglehold that the scientific advice from SAGE and others has had on government.

The debacle over vaccine passports also led to not only led to a division in the Cabinet between ministers such as Paul Scully, Sajid Javid and Thérèse Coffey – who did not support the proposal – and those like Grant Shapps who supported the idea, but it also led to one senior minister claiming that Michael Gove's decision to go with the minority view implied that it did not matter what fellow ministers thought; that Michael Gove had already made his decision. As such, the minister stated their belief that Gove 'has far too much power' within the government.[532] However, despite these ongoing tensions and differences of opinion which have been a feature of Cabinet throughout the pandemic, it is an institution which can be seen to have reconciled itself at nearly all stages with leading scientific opinion from SAGE. In many of its major collective decisions, it followed that advice without deviating from it or challenging the prevailing scientific adviser 'groupthink' narrative.

Cabinet Committees

Does Cabinet work effectively in the arrangements employed under Covid-19? After all, Cabinet committees are groups of ministers that can 'take collective decisions that are binding across government'.[533] It is said they are partly designed to reduce the burden on the full Cabinet by allowing smaller groups of ministers to take decisions on specific policy areas; but by navigating

[529] Aubrey Allegretti, Daniel Boffey, Nicola Davis and Gwyn Topham, 'UK eases Covid travel rules for tourist spots despite cabinet rift', https://www.theguardian.com/world/2021/jun/24/uk-lifts-quarantine-for-arrivals-from-malta-balearics-and-some-caribbean-islands

[530] David Maddox, 'Cabinet split on vaccine passports for nightclubs 'Gove has too much power', https://www.express.co.uk/news/politics/1473904/coronavirus-news-cabinet-split-vaccine-passports-nightclubs

[531] Marie Jackson, 'England vaccine passport plans ditched, Sajid Javid says', https://www.bbc.co.uk/news/uk-58535258

[532] David Maddox, 'Cabinet split on vaccine passports for nightclubs 'Gove has too much power', https://www.express.co.uk/news/politics/1473904/coronavirus-news-cabinet-split-vaccine-passports-nightclubs

[533] Institute for Government, 'Cabinet committees', https://www.instituteforgovernment.org.uk/explainers/cabinet-committees

around full Cabinet decisions, do they navigate around responsibility and full governmental accountability?

Only in mid-March in 2020 did government construct four new Cabinet committees – key for ministers in thrashing out concerns and disagreements, and focused on considering health, economic, public sector preparedness, and international responses. Those four new 'implementation' committees involved specific ministers: (i) Healthcare, chaired by the Health Secretary, (ii) General Public Sector, chaired by the Chancellor of the Duchy of Lancaster, (iii) Economic and Business, chaired by the Chancellor, with the Business Secretary as deputy chair, and (iv) International, chaired by the Foreign Secretary.[534] It was said that the new committees would feed into a daily 'C-19' meeting chaired by the Prime Minister, but that these daily meetings of key ministers and officials within the Cabinet Committees would only monitor progress and refine the measures agreed by COBR. The UK COBR meetings would be used 'to take strategic decisions and review overall progress in the campaign to contain, delay and mitigate coronavirus.'[535]

Interestingly, the press statement announcing the four committees confirmed that civil servants and experts would continue to support the government's efforts and contribute to the approach, which is 'led by the best scientific advice'. It had already been normalised, in other words, that all the committee input would be subordinated to the 'best scientific advice', as set out by SAGE and NERVTAG.[536] In that sense, ministers could not have been determining a policy, taking into account the economic and social impact. Rather, it seemed more likely they were polishing a plan already established and formulated by scientific expertise. The very fact that the committees were late to the decision-making process suggests they were not the main drivers for the government's Covid-19 policies – at least throughout February and March 2020.[537]

Despite the government's announcement of these four Cabinet committees stating the strategic decisions would be made in the COBR meetings, by May 2020 the C-19 meetings seemed

> '…to have become the dominant decision- making body, as it was later revealed that COBR had not been meeting from 10 May onwards. Both C-19 and the MIGs, as cabinet

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[534] GOV.UK, 'New government structures to coordinate response to coronavirus', https://www.gov.uk/government/news/new-government-structures-to-coordinate-response-to-coronavirus

[535] GOV.UK, 'New government structures to coordinate response to coronavirus', https://www.gov.uk/government/news/new-government-structures-to-coordinate-response-to-coronavirus

[536] GOV.UK, 'New government structures to coordinate response to coronavirus', https://www.gov.uk/government/news/new-government-structures-to-coordinate-response-to-coronavirus

[537] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

committees, could take decisions themselves, so not everything was reported upwards from the MIGs to C-19, or from C-19 to cabinet.'[538]

It is not clear yet how large a failure those constructions have been, but the move from COBR-led meetings, the grand 'quad' meetings – which must have isolated Cabinet at certain times – through to the later Covid-S/Prime Ministerial and Covid-O/Gove committees, suggest the structures never truly worked, nor seemed completely settled. The British public were being governed from March 2020 onwards by largely unscrutinised scientific advice, unfiltered by ministerial Cabinet and, for much of the early stages of the pandemic, all unamended and often undebated by parliament. This meant there was no real public accountability or parliamentary scrutiny for the hugely costly policies pursued by the government. Many in parliament or the public may (incorrectly) assume the expediency of rapid public administration trumped any concern for challenges in this new system of supposedly democratic governance.

In July 2020, the Public Accounts Committee found that effective coordination and command structures are essential for good decision-making in any ongoing emergency, but despite the implementation of four ministerial Cabinet committees to coordinate the pandemic response, decision-making on vital issues had been slow. In particular, it had not adequately taken into account the long-term impacts on individuals and communities. The Committee called on the Cabinet Office to review crisis command structures to ensure that longer-term decision-making was being properly informed and coordinated effectively across government.[539]

As highlighted by the Public Administration and Constitutional Affairs Committee (PACAC) in their September 2020 report, the minutes of the four implementation committees were not published. Consequently, it was not possible to investigate what role COBR meetings played in addition to daily C-19 senior ministerial Cabinet meetings. Even though these committees existed to support decision-making, the media made reference in April to a 'quad' of ministers making decisions. It is not known how this 'quad' of ministers functioned in practice. It is not known who attended these meetings or how it connected to the formal collective decision-making structure of cabinet committees. It remained unknown to the Committee what advice the 'quad' took when making decisions. In effect, it was a closed, unscrutinised, unaccountable and unrecorded decision-making process.

The emergence of two competing parallel governance structures – of the quad and the Cabinet committees – did not bode well for a good Covid policy. PACAC therefore contend it

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[538] Institute for Government, 'UK government coronavirus decision making: key phases', https://www.instituteforgovernment.org.uk/printpdf/9819
[539] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/

'…raise[d] questions of a parallel governance structure in addition to the formal Cabinet Committee structure. Such parallel systems risk creating silos where decisions are made without the full and proper discussion, advice or consultation that would be expected in Cabinet Committees.'[540]

Additionally, in their March 2021 report, PACAC said this lack of transparency in governance arrangements remained.[541] There is only a small degree of transparency ever required of Cabinet Committees – the ministerial membership lists are available online, along with a one-sentence description of the terms of reference. So why not publish more information, such as progress on an issue, sticking points when divisions have occurred, and resolutions to those concerns?

Two later Cabinet committees did emerge and are still in operation. By June 2020, the government appeared to replace its four implementation committees through the creation of the Covid-19 Strategy Committee (Covid-S) and the Covid-19 Operations Committee (Covid-O).[542] The terms of reference and membership of both those committees are set out below. As pointed out by the Paymaster General, Penny Mordaunt, Covid-O is a key decision-making body 'where you could take decisions swiftly, enhancing the normal write-around processes that you would have normally to clear business.'[543] There was a strong sense that Michael Gove had been placed centre-stage in the decision-making process.

Cabinet committees to manage the government's response to Covid-19

Covid-19 Strategy
Membership:
Prime Minister (Chair);
Chancellor of the Exchequer;
Secretary of State for Foreign, Commonwealth and Development Affairs, and First Secretary of State;
Secretary of State for the Home Department;

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[540] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19', https://committees.parliament.uk/publications/2459/documents/24384/default/
[541] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://committees.parliament.uk/publications/5076/documents/50285/default/
[542] Public Administration and Constitutional Affairs Committee, 'Parliamentary Scrutiny of the Government's handling of Covid-19', https://committees.parliament.uk/publications/2459/documents/24384/default/
[543] Public Administration and Constitutional Affairs Committee, 'Oral evidence: Data Transparency and Accountability: Covid 19, HC 803', https://committees.parliament.uk/oralevidence/1672/default/

Chancellor of the Duchy of Lancaster, and Minister for the Cabinet Office;

Secretary of State for Health and Social Care; and

Secretary of State for Business Energy and Industrial Strategy.

Terms of Reference

To drive the Government's strategic response to Covid-19, considering the impact of both the virus and the response to it, and setting the direction for the recovery strategy.

Covid-19 Operations

Membership:

Chancellor of the Duchy of Lancaster, and Minister for the Cabinet Office (Chair);

Chancellor of the Exchequer; and

Secretary of State for Health and Social Care.

Other Cabinet Ministers will be invited according to the agenda.

Terms of Reference

To deliver the policy and operational response to Covid-19.

*Source***:** https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees

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In PACAC's March 2021 report, they addressed the implementation of these committees and expressed their criticism of the government's accountability of decision-making surrounding them, particularly the Chancellor of the Duchy of Lancaster, Michael Gove. As the Chair of Covid-O, PACAC contend that Michael Gove was accountable to Parliament for cross-government co-ordination of the response to Covid-19 and for ensuring decisions were informed by data. While only the Prime Minister stood in front of the country and Parliament to be accountable for key decisions (such as lockdown) they found it was Michael Gove who appeared 'accountable for ensuring that these decisions are informed by data, through Covid-O and as part of the co-ordinated response.'

However, Gove had failed to demonstrate his accountability to PACAC 'on numerous occasions' – sending junior ministers who were not always able to provide satisfactory answers to questions, despite the fact ministers were alerted to themes of questioning prior to the session. As such, it was further demonstrated that lines of accountability were unclear and PACAC was unable 'to hold a Minister to account for ensuring that decisions are underpinned by data'.[544]

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[544] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://committees.parliament.uk/publications/5076/documents/50285/default/

One aspect of the debate rumbled on. Responding to PACAC's criticisms, Michael Gove wrote to William Wragg, Chair of PACAC. In his letter, Gove said both Covid-S and Covid-O were established 'to oversee the second phase of the response to and recovery from COVID-19'. He stated he chairs Covid-O while the Prime Minister chairs Covid-S, and that 'Both Committees meet as required to take operational and policy decisions.' Gove also discussed his responsibility, saying that 'the Minister responsible for the policy is accountable to Parliament for the decisions and actions of the Government in respect of that policy area,' and that his responsibilities included: 'supporting the coordination of the cross-government and the devolution aspects of the response to COVID-19'; 'leading public services recovery from COVID-19'; and 'oversight of Cabinet Office responsibilities on COVID-19'.[545]

However, Gove also clarified that it is the Covid-19 Taskforce in the Cabinet Office which 'is responsible for coordinating the Government's response to the pandemic' and 'provides support and advice to the Prime Minister including data and analysis, co-ordinates the Government's collective response, and provides the secretariat function to the specific Cabinet Committees.' He added that the Taskforce drew on data and analysis from other government departments and arm's-length bodies. The Chief Medical Officer and Government Chief Scientific Adviser provided advice to the Prime Minister and other Ministers as part of these processes.[546] It is therefore the Cabinet Office that must address this question for the future.

Among the questions the Cabinet Office must ask is why a scientific clique, entrenched within a target-setting Whitehall culture which the Cabinet itself rarely chose to confront, challenge or question, disregarded the economic, non-Covid health outcomes of the most vulnerable, and the social effects resulting from the lockdown and other tiered restrictions?[547] After all, there were clear concerns expressed by civil servants, and apparently within HM Treasury, about the vastly increasing economic exposure – but their voices were buried deep inside the Cabinet Office committee structures, subsumed by the government's approach of following 'the science'.

On the question of transparency, the government have said, in response to comments made about their decision-making during the pandemic, that

> 'Principal structures for the Government's decision-making include the Covid-19 Strategy and Covid-19 Operations Committees, which meet as required to take operational and policy decisions. As noted elsewhere in this response, advice to these

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[545] Michael Gove, Letter to William Wragg in March 2021, https://committees.parliament.uk/publications/5259/documents/52595/default/
[546] Michael Gove, Letter to William Wragg in March 2021, https://committees.parliament.uk/publications/5259/documents/52595/default/
[547] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

Cabinet Committees may need to be kept confidential to ensure advisors can express their views frankly'.[548]

However, there are different methods of enabling transparency while protecting advisors or unelected officials – such as retaining the records of expressed views, so the public can read what is said, but redacting names of very junior officials where necessary.

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[548] UK Government, 'The Government's Response to the Science and Technology Committee report: The UK Response to Covid-19: Use of Scientific Advice',
https://committees.parliament.uk/publications/5868/documents/66635/default/

7. Why over-centralisation isn't the problem: confronting Whitehall managerialism, mutual learning, devolved separatism and private sector cooperation is the way forward

One of the common complaints of the critics of the government's response is the quandary of over-centralisation, but this can be a red herring. A team of academics suggested that a future Covid-19 public inquiry should address the question, 'Why were decisions so heavily centralised?'[549] They suggested that although some powers were devolved from Westminster to administrations in Scotland, Wales and Northern Ireland, the Covid-19 response in England remained highly centralised.

The coronavirus pandemic response in England rests on the central government in England setting out a policy, both when making decisions for the UK as a whole and when making decisions for England alone.[550] Academic researchers Michael Kenny and Jack Sheldon at the University of Cambridge suggest the devolved governments have expressed annoyance at this enduring tendency for Westminster politicians to conflate their UK-wide and English roles. They suggest it is a practice which has led to confusion amongst citizens in terms of what regulations to adhere to. The absence of public recognition in the UK government's English remit is in part an inherent feature of the asymmetrical model of devolution that developed from the late 1990s onwards. Whitehall ministers make decisions for England in areas that are devolved elsewhere, but are simultaneously required to perform the role of a central government that speaks to the entirety of the UK. Consequently, the coronavirus pandemic has both 'exposed the problems which this dual focus can generate' and 'illustrated the limitations of the centralised caste of English governance.'[551]

Kenny and Sheldon also examined the tensions between the state and local government caused by the governance arrangements. They thought that if blame for the government's handling of the pandemic does get diverted towards a debate about wider institutional structures and not just individual decision-makers, it is possible that 'England's dysfunctional form of governance

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[549] Chris Zebrowski, Daniel Sage and Nina Marie Jorden, 'Five questions that need answering in a COVID public inquiry', https://theconversation.com/five-questions-that-need-answering-in-a-covid-public-inquiry-158560

[550] Professor Michael Kenny and Jack Sheldon, 'How COVID-19 is exposing unresolved issues about how England is governed', https://www.thebritishacademy.ac.uk/blog/how-covid-19-exposing-unresolved-issues-about-how-england-governed/

[551] Professor Michael Kenny and Jack Sheldon, 'How COVID-19 is exposing unresolved issues about how England is governed', https://www.thebritishacademy.ac.uk/blog/how-covid-19-exposing-unresolved-issues-about-how-england-governed/

may emerge as a focus for wider political concern'. It seems likely that some reform is due, not with the devolved governments as such, but of the relationship between local authorities and central government. As Kenny and Sheldon remark, the fracture that may make this happen is 'more likely to be regional disparities within England, rather than comparisons with the other parts of the UK.' For example, widely-televised complaints by city mayors such as Andy Burnham and Andy Street reflect the 'frustration at the manner in which the small group of decision-makers at the heart of British government have handled the crisis', particularly their lack of consideration of how the impact of the virus has differed in different parts of the country.[552] It was felt the central state has, to a degree, disengaged during the Covid-19 crisis from the layers of governance and public authority that exist at lower levels of the system, including local public health officials and schools, as well as local authorities.

Some say it is centralisation which did not work, but it is not centralisation that failed. The failures were due to a bureaucratic Whitehall managerialist orientation which so pervasively inhabits the centre and proves so unreformable. Anti-centralisation arguments rest on campaign requests for deeper political devolution/independence of the nations but, again, neither of those Covid-governance authorities have proven wholly successful. Neither do maximally devolved governments operate at the most local level, so they can replicate the deeper problems already encountered with Westminster government. In other words, citizens are faced with multiple layers of bureaucratic government, and not necessarily one which proves any better than the other in serving their needs. In this way, all governments seem very much 'out of touch'. That is not to say there should not be better mutual learning between government and local authorities, for example, so that the centre can understand what councils can deliver. They have the local, targeted data on citizens – so they know which groups need the most help and are vulnerable.

As a result, many on the political left and those who consistently call for deeper devolution have wrongly identified 'centralisation' of UK governance as a core problem during the pandemic. This conclusion did not appear to reflect the evidence. One piece of research by Cairney and Wellstead (2020) looked into the study of 'trust' as playing an important role in relation to Covid-19 policy in the UK and US. When they asked, 'to what extent do policymakers trust citizens to change their own behaviour?', they found that although both political systems foster multi-level policymaking, 'the UK is more centralized and able to produce a coherent response'. As we learned, the UK is understood to have based policy initially on trust in citizens to change behaviour, followed by a pivot to more imposition. The researchers suggest that 'high coordination allowed UK ministers (and their devolved government counterparts) to

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[552] Professor Michael Kenny and Jack Sheldon, 'How COVID-19 is exposing unresolved issues about how England is governed', https://www.thebritishacademy.ac.uk/blog/how-covid-19-exposing-unresolved-issues-about-how-england-governed/

present an initially consistent message about temporary imposition'. In the US, in contrast, 'there was high variation across states and no coherent message on the temporary suspension of a trust in individuals to act in the public good.'[553]

The sharing of data and information between the centre and local governments could have been improved upon. There was a notable failure of national public bodies to share data that was available with each other, especially between national and local government.[554] In May 2020, the Public Administration and Constitutional Affairs Committee heard that localised data was key to the response but vital information which might have helped local leaders to respond quickly to outbreaks had not been moved rapidly enough to them. Central Government seemed unwilling to share granular data on the spread of the virus, and systems were fragmented. The Committee indicated all available data should be shared with local areas in as much detail as possible, as quickly as possible.[555] They also suggested the Department of Health and Social Care should undertake an urgent review of health data systems in England, including the role of the Department in aggregating health data from across different health bodies. The Cabinet Office, they say, should then peer review this work and look for lessons to share with other Government departments.[556]

The phenomenon of 'Whitehall managerialism' has been a defining feature of civil service development over the past 30 years, with a defining emphasis on building managerial skills.[557] During the pandemic, this meant ministers have become strongly tied into a civil service emergency planning system upon which they exert little control. The new Cabinet Office structures of the past two decades can be viewed as reflecting that culture. Ultimately, managerialism hollows out organisations, separating the management layer from an understanding of the work being done or of its importance. It is a troubling facet of organisational culture, particularly when considering the pandemic responses with fast-changing data and crisis delivery in government.

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[553] Paul Cairney and Adam Wellstead, 'COVID-19: effective policymaking depends on trust in experts, politicians, and the public', https://www.tandfonline.com/doi/full/10.1080/25741292.2020.1837466
[554] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 3
[555] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062
[556] Public Administration and Constitutional Affairs Committee, 'Government transparency and accountability during Covid 19: The data underpinning decisions', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/803/80308.htm#_idTextAnchor062
[557] Jim McConalogue and Tim Knox, 'A hat trick of failures: How 'the Blob' led the British Government down the wrong path', https://www.civitas.org.uk/content/files/2467-A-A-hat-trick-of-failures-ppi-60-WEB.pdf

It is not the fault of centralisation but this brand of organisational performance assessment which can be thought of as broadly introducing a more formal but often culturally obsessive management culture in the civil service. By taking on an approach to management defined by objective goal-setting as an end in itself, its focus becomes not on the long-term needs of government but only on attempts to achieve targets. Since managers become the unintended beneficiaries of a policy process which increases their social status and strengthens their organisational position, ministers become more likely to turn narrow bands of highly technical advice into public policy, without any wider consideration of their decisions. The much-discussed policy errors, including failing to provide PPE to NHS and social care staff in the early stages of the pandemic, and discharging care home residents from hospital to ensure greater NHS capacity, could be seen to reflect those wider trends. Whilst mistakes are natural, it is striking how many mistakes have been made by those whose strong advice was driving government policy.

The distinction between centralised or multi-level does not always mean one is right, the other wrong; and there are lessons that federal countries can teach the UK, and vice versa.[558] If we look to researchers at the University of Southampton, Jen Gaskell and Professor Gerry Stoker, and their early comparisons between Switzerland and England's responses, it becomes relevant to compare the attributes of multi-level governance – central capacity, decentralised capacity, mutual learning – which, when combined, can contribute to greater chances of positive practical outcomes in times of crisis.

Although there are a multitude of differences between the two countries, when the researchers looked at central and decentralised capacity, they acknowledged there are clear benefits to having a strong central capacity, in terms of the ability to implement rapid, decisive action. For example, the UK government unveiled its plan to tackle the outbreak on 3 March 2020 – when there were no fatalities and only 51 cases, before then changing their course after a model by Imperial College London. In contrast, the Swiss Federal Council did not declare an 'emergency situation' until 13 March – when Switzerland had over 1,000 cases and eight fatalities. By then, the Council was also 'receiving heavy criticism from the medical community for its lack of coordinated action.' However, that 'tension between speed of reaction and the need to include a broader range of stakeholders in decision-making was counter-balanced by the strength of Switzerland's decentralised capabilities' – with all three governance levels mobilising different resources to tackle the virus outbreak.

In the UK, however, perhaps we may concede that the role/agency of local councils and other bodies in the response was 'not clear' and could be improved upon. As Gaskell and Stoker

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[558] Jen Gaskell and Gerry Stoker, 'Centralised or multi-level: which governance systems are having a 'good' pandemic?', https://blogs.lse.ac.uk/politicsandpolicy/governance-systems-covid19/

suggest, NHS bodies are further bound up in an intricate system that seems to discourage initiative in favour of regulation and performance measurement. It is neither clear on how to implement central government's orders in various sectors as a result of the 'lack of decentralised capabilities' at the local levels.

The comparative practices of mutual learning can also show the UK the way forward. While in Switzerland, where mutual learning is institutionalised in the consultation processes at the cantonal and communal levels, the researchers found that during the crisis, these consultation mechanisms can be accelerated and feed into central decision-making. The UK's relationships between local and central government departments and agencies were at times characterised by a lack of trust and competition. We have no institutionalised processes of mutual learning, or rather they happen on an ad hoc basis in the UK. The Swiss case ensured locally-relevant and appropriate responses were able to influence the general course of the country's strategy, as Gaskell and Stoker suggest. It is entirely plausible that the UK can learn lessons of building public trust, as well as information-sharing and mutual learning, in this exercise.

But it does not then seem satisfactory to blame 'over-centralisation' when in fact there were cross-cutting themes, such as the inability of Whitehall advisers to grasp the relevance and roles of the private sector, which came to the fore during many stages of the crisis. Irrespective of the successful initial vaccine programme, the clear chasm between private and public sectors should help to define the lessons to be learned. The government will be aware of the observation that the government's central procurement and local distribution of vital goods and equipment exposed some difficulties.[559] Even though a pandemic had been identified as the government's top non-malicious risk, the DHSC had not focused enough on the challenge of how to identify need in the care sector and ensure supply of PPE.[560] Part of this issue revolves around the recognition that authorities could have 'stocked up on PPE sooner or had UK-based alternative supply options' to lessen the impact of the high monetary cost. There are major lessons to be learned in relation to the government's procurement of PPE and 'how far it was able to deliver and distribute essential equipment to where it was needed' in good time.[561]

It is recorded and has been discussed that many of the business support measures were of a one-size-fits-all variety – which were no doubt more easily implemented – but some crucial sectors of the economy required bespoke support, and the government was slower in providing

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[559] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/
[560] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/404/40405.htm
[561] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/

targeted support to where it is needed for those parts of the economy.[562] There were calls for the BEIS and the Treasury to engage with certain sectors which needed bespoke support in order to develop measures to aid those business throughout the rest of the pandemic, but they were not heard.

The lesson we can learn of providing PPE and ventilator equipment is to recognise that government and public sector bodies misunderstand what the private manufacturing sector within our own national borders could deliver. For the UK's part, certainly, the successful manufacturing and deployment of effective vaccines by the autumn of 2021 has essentially enabled a resumption of much of normal life, with immense benefits to people's lives, livelihoods and to society.[563] However, the early approach taken within government exposed a misapprehension by government and Whitehall of the UK's own domestic manufacturing capability, combined with poor governmental assumptions that all such equipment must be imported from other countries, including China. While an 'any means necessary' approach to domestic supply (such as for PPE) can be supported in the most extreme circumstances, the lesson to be learned is we should not be so greatly dependent on other foreign countries in a period of crisis. However, it is a reassessment of public policy rather than a tired reassessment of centralisation which can help us to recognise how domestic manufacturers could be better connected with national demand for the future. Such a reassessment might lead us to acknowledge that our economy is unbalanced. And as John Mills wrote during the pandemic, the proportion of our GDP which we invest in the future is far below the world average, and what money we do spend is not on the right projects. We have deindustrialised to a greater extent than any other advanced economy, with dire consequences for regional balance, good steady job prospects, increases in productivity, and our ability to pay our way in the world.[564]

The aversion of officials towards a government-backed equity fund, as proposed by researchers at Civitas research during the pandemic, suggests, again, an unnecessary division of government from business. It was previously suggested that a government-backed equity fund should be established to provide UK-wide manufacturers with the capital required to restructure and grow competitively back into production. In return for a minority stake in the business, a Debt-Equity Swap model would have injected much-needed patient capital at a time

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[562] Public Accounts Committee, 'Whole of Government Response to COVID-19', https://committees.parliament.uk/publications/2024/documents/22788/default/

[563] House of Commons Health and Social Care, and Science and Technology Committees, 'Coronavirus: lessons learned to date', https://committees.parliament.uk/publications/7496/documents/78687/default/ para 17

[564] John Mills, 'The Road to Recovery: Reviving Manufacturing after Coronavirus', https://civitas.org.uk/publications/the-road-to-recovery/

when no other affordable borrowing instruments were available.[565] By identifying and protecting critical supply chain businesses and jobs, such government coordination could have helped manufacturers overcome the challenges they faced – in contrast to the insolvencies in the sector that are likely to result once all support packages are withdrawn from the marketplace. The approach by government to such proposals during this time implied not a concern with centralisation but a risk-aversion to remedying market disturbance.

We must learn to refocus public policy and legislation – with full impact assessments – towards better programmes that help public interventions overcome a divorce from private actors within the United Kingdom. For example, a localised relationship-styled banking system would have better understood and connected the government's business loans policy with most local small and medium-sized enterprises (SMEs). This is perhaps a lesson to be learned. Who would not now accept that a significant challenge during the initial lockdown had been inaccessible banking and investment systems? The primary objective should be to restore personal responsibility, to empower people who live locally to solve their own problems, and by shifting investment power to localities.[566]

There are already ambitious plans afoot in England to establish regional mutual banks in several areas. We need only look to German local savings banks (Sparkassen) – which typically operate within the boundaries of a local council and can't lend outside. During the 2008 recession, German savings banks increased loans to business while the large commercial banks cut them.[567] The significance of local relationship banks is that they put economic power into the hands of people in localities, and overcome the challenges of a banking system unaware of local business or how to evaluate business performance on the ground in specific regions. Again, when we think about crises, this is less a question of over-centralisation but on refocusing public policy to construct better interventions (with full impact assessments) that overcome the divorce of public sector institutions from businesses.

The continued concern that government accepted other trade-offs from acting quickly, such as paying higher prices for goods than it would have paid pre-pandemic – including for ventilators and PPE – should be considered as simply bettering government understanding of domestic manufacturing capabilities and looking to a policy of building a national standard of self-sufficiency, combined with enhancing policies of import substitution and export promotion. The other outcome for public policy reforms included the need to avoid import and supply chain

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[565] Jack Harris and Jim McConalogue, 'Rapid financial support to provide urgent liquidity to manufacturing companies via a Debt Equity-Swap option', https://www.civitas.org.uk/publications/rapid-financial-support-to-provide-urgent-liquidity-to-manufacturing-companies-via-a-debt-equity-swap-option/

[566] David Green, 'Economic recovery after the lockdown', https://www.civitas.org.uk/publications/economic-recovery-after-the-lockdown/

[567] David Green, 'Economic recovery after the lockdown', https://www.civitas.org.uk/publications/economic-recovery-after-the-lockdown/

dependency on China in certain critical sectors.[568] Immediate concerns surrounding the UK's productive capacity, such as PPE (purchased during the crisis for a period from China) should be placed in the wider and long-term context of Britain's approach to the economy for a series of decades. If we are to ensure that post-Brexit Britain is resilient, dynamic and able to stand on its own two feet, the economy must be recalibrated so that in the future it is less dependent on other nations that may become unpredictable. If we are to pursue a policy of 'partial decoupling', policy would begin to insulate the UK against the challenges posed by our current economic dependence on China.[569]

[568] Max Klinger and Jim McConalogue, 'Rethinking the UK's relationship with China: How to address key challenges to British economic security posed by the nascent superpower', https://www.civitas.org.uk/publications/rethinking-the-uks-relationship-with-china/

[569] Jack Harris, Rachel Neal and Jim McConalogue, 'Understanding UK Strategic Dependence on Chinese Investment: The Case for 'Partial Decoupling'', https://civitas.org.uk/press/understanding-uk-strategic-dependence-on-chinese-investment-the-case-for-partial-decoupling/

Conclusion

Through the deep encroachment of Covid-regulation into almost every aspect of our lives, the response of government and society to the pandemic tells us a lot about ourselves and how we are to be governed in future. What we collectively think about 'democracy' continues to shift towards citizens being obliged to sign up to panicked and unworkable Net Zero, Zero Covid or Zero-disparity quotas and regulatory demands. Ordinary liberal principles of government were, for much of 2020 and all of 2021, considered unnecessary. This report clearly shows that minimal attention was given to the wider public interest from the effect of the non-pharmaceutical measures, including the absence of cost benefit analyses, few impact assessments and few post-measure appraisals.

In normal times, democracy is about running a practical style of government insofar as the majority of the community is agreed upon individual liberty, the rule of law and limited government. When we move away from protecting individual liberties, or the known rule of law among citizens, and towards extensive paternalistic government with rule by decree, then the foundations of our democracy fall away. Democracy equates to us holding a shared set of transparent and accountable processes and procedures which can easily be recognised by citizens. But if we do not have these, or give them up for some grander state-sanctioned vision for society, then, over the long term, the grounds for claiming we live in a democracy wear thin.

This report exposes how the UK's democratic system was undermined during the course of the pandemic through curtailing the influence of the public and their elected representatives. Through 'virtual' engagement, MPs have in reality been willing to give up their participatory roles in the decision-making, scrutiny and accountability of government, often to the detriment of the interests of their constituents. Throughout this period, the population has been asked to accommodate a governing creed that ministers and their Whitehall networks 'know best'; that all benefits which emerge from the restrictions overrule any weight against the impacts on the economy, the costs borne by the taxpayer and the impact on civil liberties.

This hopefully temporary, but pronounced, disregard for democracy can be found by observing how Covid-19 displaced the idea of 'policy' itself. Policy can be thought of as 'a set of ideas and proposals for action culminating in a government decision.'[570] We have come to think of regular democratic government as a system that receives various inputs, including political demands, combined with all the resources available (such as labour, capital and expertise) which then

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[570] See Bill Jones, 'The policy-making process' (Chapter 23), in: Bill Jones, Philip Norton, Oliver Daddow (Eds.) *Politics UK* (Ninth Edition), London: Routledge. p.544.

generates outputs through different kinds of government decision, be it regulations, pronouncements, public goods and services, and so forth. But, as we have seen, a number of crippling factors can collapse that process, particularly within an emergency setting. Political demands can be founded on panic, uncertainty and irrationality. Much of the advice received by government was from those who looked for excessive state paternalism. They exploited the great unknowns of Covid-19 and its transmission within the community and thought the state could control all aspects of a disease as if all its challenges were obvious, knowable and controllable.

Our democratic forms of governance have been set aside by high-order challenges, and on which stronger resilience within our institutions is required for the future. The attempt to make the radically uncertain consequences of a disease to some extent knowable, measurable and controllable within the early months of the epidemic is understandable. Yet, as the months went by, well after mid-May 2020, when the Prime Minister released plans to ease some restrictions, the public authorities should have recognised that the central demand of the UK constitution is our duty to politics in the UK parliamentary democracy that has gradually evolved. Just months after a general election, the democratic choice within the political system was set aside as the people's newly elected representatives had very little decision-making power or even rights of amendment to the major coronavirus laws which were to drastically affect their everyday lives. The answer to the question of who was to govern the people through this time of national emergency changed from their elected representatives to an unelected set of advisers and bureaucrats over whom they had no control.

The sense of emergency and panic in the policy-making process is reflected in the nature of the outputs of government – contradictory ministerial speeches, the amalgamation of laws and informal guidance, regulations being brought into force before being laid before Parliament, the misunderstanding of advice at different levels (centrally, locally and by regular citizens), scientific advisers in government using their privileged and elevated positions to broadcast their own opinions in the media on sensitive Covid-19 policy areas, followed by draconian restrictions imposed within minutes but rarely revoked when the data changed or improved.

Given that government never invoked regular and sufficient impact measurements and cost-benefit analyses of its policies, a critical feature of the policy response is that we blocked the learning process through which societal impacts could then have informed a change of 'inputs' in policy-making. This is the normal process in regular democratic government. The cross-checking and dynamic process of democratic policy-making process had been cut because the impact on society was only appreciated through a very narrow epidemiological paradigm.

By addressing the condition of our democratic governance, this report has found a series of obstacles to effective governance, and suggests areas of reform that could be pursued to address those weaknesses:

- Our response to Covid-19 has marked the emergence of a new phase in the growth of the regulatory state in which, for example, crucial ministerial decision-making is delegated to advisory groups and wider arm's-length bodies (ALBs), with often disastrous results for society as a whole. In contrast, we need to ensure that an urgent review is brought forward in order to rebalance ALBs so that, in the future, they can provide genuine accountability to the public in tandem with their ability to perform in line with set objectives.

- We now know that impact assessments would have been preferable as a basic tool in delivering better Covid-regulations, to ensure government is only regulating when necessary and doing so in a way that is proportionate to the risk being addressed. The re-establishment of these is an urgent task which must be taken up by government in 2022. After all, the costs associated with all the various major non-pharmaceutical interventions – including stay at home orders, through to closure of non-essential retail and schools – should all have been supported by a comprehensive cost-benefit analyses and brief impact assessments, together with some degree of public consultation.

- For Cabinet, the move from COBR-led meetings, to the four policy Cabinet committees, through to grand 'quad' meetings – which must have isolated Cabinet at certain times, if not created confusing parallel Cabinets – and afterwards the Covid-S/Prime Ministerial and Covid-O/Michael Gove committees, suggest the Cabinet structures never truly worked, nor seemed settled. This process of setting up Cabinet committees must be reviewed to enable better delivery of policy but also to overcome the division and the plurality of committees by integration of work in the committees, and effective sharing and analysis of the evidence.

- The problem resulting from the lack of the government's own economic input could be solved by creating a committee – a Social & Economic Advisory Group for Emergencies (SEAGE) – which would provide economic and social advice to support government decision-makers during emergencies.

- Among the questions the Cabinet Office must ask is why a scientific body of committees, entrenched within a target-setting Whitehall culture which the Cabinet itself rarely chose to confront, challenge or question, disregarded the economic, non-Covid health outcomes of the most vulnerable, and the social effects resulting from the lockdown and other tiered restrictions?

- Given ministers' near-total dependence on SAGE, we should ensure such advisory groups should only advise, not usurp government decision-making, so that all ALBs –

including SAGE and NERVTAG in the future – also report regularly, directly and more systematically into a sub-Select Committee within the House of Commons committee system, to improve parliamentary accountability.

- Given that our current system gives an unwieldy sense of authority to the ALBs, we should consider why SAGE and NERVTAG could not be enabled to operate as advisory non-departmental public bodies (NDPBs) and made even more directly accountable to the public and parliament, with a panel of public lay members to bring an outside, independent and more public-focused perspective to enhance governance.

- In the light of the reverence that government ministers showed for following 'the science' passed on by advisory groups, and which had severe implications for democratic standards, we should do more to upskill MPs and peers in Parliament with mostly social sciences backgrounds, to ensure they have better overall scientific literacy and knowledge. 'Taking account of science' rather than 'following the science' will provide appointed ministers with Departmental briefs, better guidance and a more realistic basis for decision-making.

- While we might accept that parliament did respond to the pandemic and lockdowns through a mixture of hybrid arrangements for parliamentary participation, many commentators and participants saw the limitations of the process. All possible steps should be taken to rekindle spontaneous debate in the chamber, and for the Speaker to address any failings of ministers if they choose to bypass parliament – and avoid (unless absolutely essential) the pre-published call list system.

- Leading constitutional scholars have critiqued the process of SI-enacted decision-making while noting that the government opted to use the Public Health Act 1984 for lockdown power because, by comparison with the Civil Contingencies Act, the degree of scrutiny provided for under the Public Health Act is significantly limited. A new Public Health Act should be brought forward to remedy those issues and reduce the need for Statutory Instruments ensuring that MPs have the power in the House of Commons to be able to vote on regular, amendable motions.

- Effectively, a parliament has been set up with uniform cultural restriction-enthusiastic positions, and with the result that many self-employed citizens and business-owners whose livelihoods were seriously compromised by the government's restrictions had no helpful parliamentary representation. MPs could learn a great deal from the attitudes of the leading Covid Recovery Group of MPs and the remedies they sought to bring about, such as to secure votes on vital Covid regulations, and to ensure those groupthink cultures in parliament and in the highest echelons of government can be addressed and ultimately remedied by parliament.

- Parliament should move to a fortnightly or monthly allocation of opposition and backbench times (and not by session) to enable some transfer of power to MPs to make decisions.
- We should ensure that parliamentary votes on regulations should in future be held before the introduction of all new UK- or England-wide measures.
- Current academic research lends support to the idea that the structures and practices of modern Cabinet government have increased the likelihood of 'groupthink' occurring. An enhanced 'challenger function' should be brought forward by MPs in parliament to scrutinise Cabinet decisions, including training for ministers to enable challenge of information presented to them, often as fact. As above, Cabinet office committee structures should include a SEAGE group.
- In light of the failures in the Covid-19 policy response to share information between different arms of government, processes of mutual learning (beyond that an ad hoc basis) should be formally instituted. We could learn vital lessons from the Swiss system which ensured locally-relevant and appropriate responses were able to influence the general course of the country's strategy.

Covid-19 governance failures demonstrated that major actions are essential for re-creating democratic processes which enable scrutiny, accountability, openness, transparency and integrity to be restored to the political governance of the UK. Future reforms need to recognise that the Covid-19 government decision-making process has appeared to be arbitrary, opaque, inadequately scrutinised and subject to pressure by insulated expertise within central state committees and ALBs, beyond regular means of democratic accountability. In making governmental decisions on a range of non-pharmaceutical interventions (NPIs), far too many of our democratic and governance processes have not only been circumvented, with very little public consultation, but are considered unnecessary and are ignored by those in government today in the creation of a vast range of policy.

The changes described in this report require government to both *step up* in some cases and *step back* in others, so that the national treasures of our democracy – including individual liberty, the rule of law, limited government and a freer society – can flourish again.