Saving lives and livelihoods – the policy dilemma

The government is accused of mixed messages and shifts of policy in response to the pandemic. It is in practice trying to achieve a precarious balance between bearing down on the virus and allowing the resumption of more normal economic life.

There are now two strong camps in the nation. There are the freedom lovers who think more of the special restrictions and measures should be lifted. They do not think the pandemic is that serious and want to see liberties restored. They point out the death rate as puboished is now very low and the pressure is off intensive care. There are pandemic fighters, who want every measure of control taken that can help bear down on the virus and go on to eliminate it. They resent any moves to more normal lives and worry that all relaxations come at a heavy medical price. They argue it is only a matter of time before the current upsurge in reported cases of the virus finds itself into the Care Homes and homes of the vulnerable and raises the death rate.

The government itself reflects these divisions in society. The Chancellor argues the case for more economic relaxation, whilst the Health Secretary puts forward the case for more restrictions based on official advice from the medical and scientific establishment. Policy tries to do a bit of both.

In order to inform public policy better and to influence the many people who feel both impulses, there need to be some further improvements in the data and approach. We need to have better numbers collected over a sustained period for how many cases as a proportion of the population, how many serious cases needing intensive care, and how many death wholly or largely attributable to CV 19. Some of the back numbers are unreliable, and there have been various changes in definitions.

The officials of NHS England and Public Health England need to take the government’s policy of increasing testing, and the substantial sums of money Ministers have made available, and show how the large demand for tests today can soon be met. The NHS needs to concentrate on getting its staff back to work in every surgery and ward to start to reduce the backlog of other treatments and to stop avoidable deaths from causes other than CV 19.

Some progress with treatments for CV 19

I reproduce below my recent question pressing for more results on use of

drugs for CV 19

Question:
To ask the Secretary of State for Health and Social Care, what the most recent results are of trials of existing approved medicines as potential treatments for covid-19. (81471)

Tabled on: 28 August 2020

Answer:
Jo Churchill:

On 2 September, the World Health Organization (WHO) issued new interim guidance recommending the use of systemic corticosteroids in severe and critical COVID-19 disease. This is based on a meta-analysis of recent clinical trials including the United Kingdom supported REMAP-CAP and RECOVERY trials.

Clinical guidance has been issued recommending clinicians consider the use of systemic corticosteroids, including dexamethasone and hydrocortisone, for National Health Service patients with severe and critical COVID-19.

This updates previous NHS advice to consider dexamethasone for the management of hospitalised patients with COVID-19 who require oxygen or ventilation; the updated advice includes the use of intravenous hydrocortisone and aligns with the WHO guidance.

The NHS advice and WHO guidance can be found at the following links:

https://www.cas.mhra.gov.uk/ViewandAcknowledgment/ViewAlert.aspx?AlertID=103092
https://www.who.int/publications/i/item/WHO-2019-nCoV-Corticosteroids-2020.1

The answer was submitted on 15 Sep 2020 at 13:18.

The government's legal statement

Some constituents have asked about the legal base for the legislation Parliament will consider next week. This is it:

HMG LEGAL POSITION: UKIM BILL AND NORTHERN IRELAND PROTOCOL
This is the Government's legal position on the UK Internal Market Bill ("the Bill") which was introduced on 9 September. The purpose of the Bill is to promote the continued functioning of the internal market in the UK after the conclusion of the transition period provided for in the Withdrawal Agreement and the European Union (Withdrawal) Act 2018. The Bill also provides for how aspects of the Northern Ireland Protocol to the Withdrawal Agreement apply in the UK's domestic law. In particular it ensures that the government will be

able to deliver its commitments to protect peace in Northern Ireland and the Belfast/Good Friday Agreement, and to strengthen and maintain the UK internal market.

Clauses 42 and 43 of the Bill give HMG the power to make regulations to (i) disapply or modify the application of any exit procedures that would otherwise be applicable to goods moving from Northern Ireland to Great Britain, and (ii) make regulations setting out how the provisions of the Northern Ireland Protocol on State aid are to be given effect for the purposes of domestic law. The clauses provide that these powers may be exercised in a way that is incompatible with provisions of the Withdrawal Agreement. Clause 45 of the Bill expressly provides that these clauses, and any regulations made under them, have effect notwithstanding any international or domestic law with which they may be incompatible or inconsistent. This 'notwithstanding provision' partially disapplies Article 4 of the Withdrawal Agreement because it removes the possibility of challenge before domestic courts to enforce the rights and remedies provided for in the Withdrawal Agreement. The effect is to disapply the EU law concept of 'direct effect'. This is the case regardless of whether any regulations made under clause 42 or 43 of the Bill are in fact incompatible with the Withdrawal Agreement.

It is an established principle of international law that a state is obliged to discharge its treaty obligations in good faith. This is, and will remain, the key principle in informing the UK's approach to international relations. However, in the difficult and highly exceptional circumstances in which we find ourselves, it is important to remember the fundamental principle of Parliamentary sovereignty.

Parliament is sovereign as a matter of domestic law and can pass legislation which is in breach of the UK's Treaty obligations. Parliament would not be acting unconstitutionally in enacting such legislation. This 'dualist' approach is shared by other, similar legal systems such as Canada, Australia and New Zealand. Under this approach, treaty obligations only become binding to the extent that they are enshrined in domestic legislation. Whether to enact or repeal legislation, and the content of that legislation, is for Parliament and Parliament alone. This principle was recently approved unanimously by the Supreme Court in R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.

The legislation which implements the Withdrawal Agreement including the Northern Ireland Protocol is expressly subject to the principle of parliamentary sovereignty. Parliament's ability to pass provisions that would take precedence over the Withdrawal Agreement was expressly confirmed in section 38 of the European Union (Withdrawal Agreement) Act 2020, with specific reference to the EU law concept of 'direct effect'.

Sovereignty

We voted for Brexit to take back control. Brexit voters wish to live in a free self governing independent country. Remain politicians thought the vote should be about trade. They wrongly asserted we would definitely be better off in and thought that was all that mattered.

I have always thought sovereignty mattered more. I also think that we can follow policies that increase our prosperity once we restore our full powers of self government.I have set out at some length how we can be better off out. I can no more guarantee that than Remain politicians can guarantee greater income if we stay in. It will depend on how we use our freedoms and how the EU use theirs.

The Remain politicians have used a variety of ploys and devices to try to delay, dilute or prevent our exit. One of their first was the court case to prevent Ministers sending in our notice to quit without further Parliamentary processes, despite the clear referendum vote. The Miller case produced a useful defence of Parliamentary sovereignty in the verdict. I had always urged Mrs May to hold a Parliamentary vote on a one clause Bill to speed us up and was not surprised by the Court decision, even though it was clearly a delaying tactic.

The Judges said

“This is because Parliamentary sovereignty is a fundamental principle of the UK constitution, as was conclusively established in the statutes referred to in para 41 above. It was famously summarised by Professor Dicey as meaning that Parliament has “the right to make or unmake any law whatsoever; and further, no person or body is recognised by the law as having a right to override or set aside the legislation of Parliament” – op cit, p 38. The legislative power of the Crown is today exercisable only through Parliament. This power is initiated by the laying of a Bill containing a proposed law before Parliament, and the Bill can only become a statute if it is passed (often with amendments) by Parliament (which normally but not always means both Houses of Parliament) and is then formally assented to by HM The Queen. Thus, Parliament, or more precisely the Crown in Parliament, lays down the law through statutes – or primary legislation as it is also known – and not in any other way “

This is now very helpful to the cause of Parliament legislating to sort out our border, customs and trade issues for the UK, notwithstanding the EU’s view of the Withdrawal Agreement. The Withdrawal Agreement is only the law because of the Act of Parliament that brings it into UK law. The UK Parliament is therefore free to amend it as it sees fit.

There are those who still seem to think it would be bad faith for the UK to exercise its sovereign powers in this way, and claim it is a breach of international law to do so. This Agreement between the UK and the EU is not some world law enforced by some world court. It is an international Agreement

where the two sides disagree about its meaning and each claim bad faith about the other. Such disputes have to be sorted out between the two parties. This dispute could still be sorted by negotiation. Otherwise it will be sorted by the UK exercising its sovereignty over our single market and customs union, and the EU exercising its powers over its own. Doubtless neither side will like the other's settlement. Each has to respect the powers of the other, as clearly stated in the Withdrawal Agreement itself.

My speech during the debate on the Awarding of Qualifications: Role of Ministers, 9 September 2020

Sir John Redwood (Wokingham) (Con): Having listened to the exchanges and read some of the documents before the debate, I am satisfied that the Secretary of State asked Ofqual to deliver the right answers. It is disappointing that its algorithm did not work and it was right that it had to be changed. Once the decision had been taken to close schools and not to proceed with exams, I think the best answer probably was to look to the teachers to evaluate the pupils and put them in the right rank order, but for there to be some moderating influence so that, overall, we got a fair spread of results. However, it appears that the algorithm did not do that and produced all sorts of individual injustices. It may have produced what Ofqual thought was the right answer school by school, but it did not produce the right answer pupil by pupil. That was a great pity and it was clear from what the Secretary of State has been saying that that was not shared with him, which is why we are debating this today. We should now move on. As many have said on both sides of the House, we need to learn lessons and make sure that the class of 2021 is better served and does not have the same difficult foray into getting their results as the class of 2020 did.

I am very pleased that a decision has been made that exams will be reinstituted. I note that we have had one Ofqual consultation already, with some conclusions, and a further consultation is under way. We have a series of new injustices that have to be dealt with, and they need to be dealt with quite soon, at this early stage. Some pupils were taught a full timetable of lessons remotely by their schools. Others had very little teaching during the summer period. Some schools were better equipped to press on with the full rigours of the GCSE and A-level courses and others were not. We need to ask ourselves what will happen in those situations, where some have been prepping for the full exam and others are now saying that perhaps they cannot in time prep for the full exam. Can we create some more time to make sure that all can be brought up to a satisfactory situation?

I see that it has been decided already that there will not be field work for

geography and geology, which is quite a big loss, that there will not be formal oral examinations for languages, including English language, and that there will be less of a syllabus for those who are doing history and geography, in terms of choice of questions. These quite big decisions have already been made. I hope that there will be no need for any further decisions that could in any way undermine the reputation or the quality of the exam that will be set, and many will pass, for the class of 2021.

Rob Roberts (Delyn) (Con): Does my right hon. Friend agree that getting the students who are due to sit their exams next year, in all the subjects that he mentions, back into the classroom again is vital to their continued academic success? Will he also join me in welcoming Labour's refreshing new position of wanting to see all children go back, having dragged its heels on this issue over the summer?

John Redwood: I am delighted that the Opposition rightly wish to see children properly educated. I have never doubted that they wanted to see children properly educated—that must be a shared view that we all hold—but it would certainly be good if the Opposition carried on in the spirit of co-operation and responded to some of the consultations, for example, because very important decisions will now be taken over when the exams will take place, what the content of exams will be and how they will be marked and assessed. We need to have two things first and foremost in our minds: of course, we need to be fair to the pupils and to take into account that their education has been interrupted in recent months, but we also need to make sure that the system itself guarantees quality, so that they get a qualification that means something and is widely respected both at home and abroad. I hope that the Secretary of State will soon be able to bring forward positive proposals so that the class of 2021 can be properly looked after.