

August 2020 Update

Chapter 7 – Central government

7.2 The Prime Minister

On 27th March 2020 it was announced that Boris Johnson had contracted COVID-19. Initially he only experienced mild symptoms, and he continued hold and chair meetings within government (albeit via video link as he was self-isolating as required by the scientific advice). However, by the 5th April, his condition deteriorated, and he was admitted into St Thomas's Hospital in Central London. The following day Johnson was moved into intensive care. A few days later he recovered, and on 12th April he was discharged. Johnson then moved to Chequers, the Prime Minister's country residence, for a period of convalescence. Later it was reported that Johnson's condition was such that his chances of survival were rated as "50-50".¹

Johnson's admission into hospital immediately raised the question as to who should deputise for the Prime Minister should they become unavailable? In this instance, Johnson himself provided the answer, stating that the Foreign Secretary, Dominic Raab, would stand in for him where necessary. Raab also holds the title of First Secretary of State, this is a sinecure title, meaning that it does not have any substantial function or a government department attached. It has been used in the past to indicate the most senior Cabinet Minister after the Prime Minister, and usually, the holder of the title deputises for the Prime Minister at Prime Minister's Question Time.²

Yet, this may not always be definitive. Firstly, the title has not always been used.³ Secondly, the holder can be a member of the House of Lords. From 2009-10, Lord Mandelson held the title, but did not deputise for the Prime Minister at Prime Minister's Question Time,

¹ Tim Shipman, 'Coronavirus: Boris Johnson's aides were told his survival chances were '50-50'' (The Sunday Times, 12 April 2020) <https://www.thetimes.co.uk/article/coronavirus-boris-johnsons-aides-were-told-his-survival-chances-were-50-50-6txf6m8fd>.

² Since 2010, William Hague (First Secretary of State, between 2010-15), Damien Green (2017) and Dominic Raab (2019-) have all deputised for the Prime Minister at Prime Minister Question Time.

³ It was not used between 1997-2001; 2007-09; 2016-17; or 2017-19. Once Damien Green resigned as First Secretary of State, Theresa May did not replace him, and David Liddington, the Chancellor of the Duchy of Lancaster, deputised for May at Prime Minister's Questions.

because he sat in the House of Lords.⁴ More generally, it would be constitutionally questionable for a member of the House of Lords to deputise for the Prime Minister, as it would make it more difficult for the House of Commons to hold the government to account.⁵

Certainly, in the past, Prime Ministers may have appointed a First Secretary of State, primarily thinking about Prime Minister's Question Time, rather than thinking that they would deputise for them more broadly if they become unavailable. For instance, when Tony Blair was Prime Minister, John Prescott was First Secretary of State between 2001 and 2007, and deputised for Blair at PMQs. Yet, had the need arisen, it's not immediately obvious that Prescott would have deputised for the Prime Minister rather than the Chancellor of the Exchequer, Gordon Brown, who both as a matter of substance and politics was the most senior member of the Cabinet after Blair himself.

This is perhaps the most important point: that it is a system of cabinet government, and that primarily, unless (like Johnson did) the Prime Minister made a choice in advance, it would be for the Cabinet to choose who would deputise in the Prime Minister's absence. It is the Cabinet that has the requisite authority to govern and is accountable as a whole to Parliament for the conduct of the government. This also means that, as Johnson was expected to return in a few weeks, no new appointment of Prime Minister is necessary.

It is a matter of politics as to what decisions the Cabinet believes it can make in the absence of the Prime Minister. While Johnson was absent, Raab was clear that he viewed his task as merely one of watching over the government, and was quoted at a meeting as saying, '[w]e've all got our jobs to do ... [l]et's get on and do them and make sure when the boss gets back that we've got on with the plan'. At the time Johnson was admitted into hospital, attention was only starting to shift towards how the lockdown was going to be released, and the broad framework for how the government would respond to the pandemic over the next few weeks was already established. Decisions for the next stage waited for Johnson's return. One way ahead would be to amend the Cabinet Manual, making it clear that the First Secretary of State would be expected to deputise for the Prime Minister, should the need

⁴ Instead, it was Harriet Harman, the Leader of House who took Prime Minister's Questions.

⁵ The accountability of government to Parliament was described as a fundamental constitutional principle in *R (Miller) v Prime Minister* [2019] UKSC 41, see 6.7.

arise, which would mean that appointments are then made with this in mind. It is possible that future Prime Ministers, and indeed Johnson himself, consider that the precedent has already been set.

7.5 The role of Cabinet

The challenges that COVID-19 poses stretch across the boundaries of ordinary government departments, and the need for speed makes the existing system of Cabinet and Cabinet Committees too burdensome. Firstly, COBR (which is named after the meeting room in which it sits—the Cabinet Office Briefing Room) regularly met. Meetings were usually chaired by the Prime Minister, with the First Ministers of Wales and Scotland and the Mayor of London and others attending as necessary. The main aim of COBR meetings (as the name suggests) is for officials to brief government ministers and others so that they can make decisions on the basis of the latest information. In addition, the Prime Minister chaired a daily C-19 meeting, often referred to as the “War Cabinet”. The Chancellor, the Health Secretary, the Foreign Secretary and Chancellor of the Duchy of Lancaster attended this meeting alongside officials as and when necessary. Officials attending these meetings would include the Chief Scientific Officer (or his Deputy) and the Chief Medical Officer. It was at these COBR and C-19 meetings that Dominic Raab deputised for the Prime Minister.

Below the C-19 meeting were four implementation committees, which sought to address the four broad areas where COVID-19 posed challenges. These four committees were as follows

- *Healthcare* - Chaired by the Health Secretary, to focus on the capacity of the NHS to cope with the crisis.
- *General Public Sector* - Chaired by the Chancellor of the Duchy of Lancaster, to look the preparedness of critical national infrastructure and the public sector (excluding the NHS) to deal with the crisis.
- *Economic and Business* - Chaired by the Chancellor, with the Business Secretary as deputy chair to consider the impact on business and to ensure that supply chains remained robust.

- *International* - Chaired by the Foreign Secretary to consider the international response to COVID-19, through organisations such as the G7 and G20.⁶

By June 2020, this structure had been partially wound down, with these four committees replaced by two new committees. Firstly, the COVID-19 Strategy Committee. This is chaired by the Prime Minister, and attended by the Chancellor, the Chancellor of the Duchy of Lancaster, the Health Secretary, Home Secretary, and Business Secretary. This committee is tasked with setting the direction for the government's response to COVID-19, establishing the strategy that will drive the recovery from the virus. The policies and operational issues that arise from the government's strategy as developed in that committee are considered by the second committee, the COVID-19 Operations Committee. This committee is chaired by the Chancellor of the Duchy of Lancaster, Chancellor, and Health Secretary. Other Cabinet Ministers are invited as and when necessary.⁷

Clearly, the scale and gravity of the public health emergency required an exceptional response from government. Yet, this structure clearly bypasses the full Cabinet, which met only sporadically during this period. Ministers not as directly involved were reported as feeling marginalised. An inner core has emerged within Cabinet, and the issue is now whether the model persists as (hopefully) COVID-19 subsides.

7.6 Government departments & 7.8.1 The Civil Service

During the crisis, the Chancellor of the Duchy of Lancaster, Michael Gove, one of the ministers within that inner core, delivered a wide-ranging speech suggesting that in order

⁶ HM Government, 'New government structures to coordinate response to coronavirus' ([gov.uk](https://www.gov.uk), 17 Mar 2020) [<https://www.gov.uk/government/news/new-government-structures-to-coordinate-response-to-coronavirus>].

⁷ In May 2020, in addition to assist with the reopening of the economy from lockdown, five ministerial taskforces were established to address specific sectors of the economy. There were (1) pubs and restaurants; non-essential retail; recreation and leisure; places of worship and international aviation. These were led by the relevant secretary of state, who established their membership. Membership of these ministerial taskforces would range from ministers, civil servants, representatives from the devolved institutions, representatives from Public Health England and representatives and experts from the industries or sectors involved. For more detail see Gavin Freeguard and Ketaki Zodekar, 'Cabinet committees' (Institute for Government, 1 July 2020) [<https://www.instituteforgovernment.org.uk/explainers/cabinet-committees#references>]

for government to address the challenges on the horizon, it needs to 'reform itself'.⁸ In summary, Gove argued that the government, including the Civil Service, needed to be more diverse both in terms of backgrounds and the expertise that they can bring to government, and that civil servants should have the opportunity to specialise in particular policy fields. This would require bringing to an end the practice by which, in order to progress their careers, civil servants would move from department to department, across different policy areas. The concern is that this results in the loss of the expertise and experience they acquired in their previous role. For ongoing projects, this makes continuity and accountability difficult to achieve. Finally, as part of an agenda to 'rebalance' the country and increase economic opportunities away from the South East of England and London, Gove argued for moving significant parts of the Civil Service away from London to economically disadvantaged areas, and for greater devolution to local areas to foster greater experimental policy making.

In a further lecture, the outgoing Cabinet Secretary, Sir Mark Sedwell, indicated his support for the broad approach of Gove, perhaps going further citing a paper written by Dominic Raab, as making a 'compelling argument' for the number of government departments to be reduced from its present twenty-five to 'around a dozen'. Sedwell argued that the 'machinery of government should be streamlined, stabilised and not subject to the vicissitudes of frequent [cabinet] reshuffles'.⁹ The announcement of the merger of the Department for International Trade with the Foreign & Commonwealth Office, to create the Foreign, Commonwealth and Development Office, starting in September 2020, is perhaps the first step in this direction.¹⁰

The pressure for radical change at the heart of government has increased since the onset of COVID-19. The rate of deaths in the UK due to the virus is one of the highest in the world.

⁸ Michael Gove, 'The privilege of public service - Ditchley Annual Lecture 2020' ([gov.uk](https://www.gov.uk), 1st July 2020) [<https://www.gov.uk/government/speeches/the-privilege-of-public-service-given-as-the-ditchley-annual-lecture>].

⁹ Sir Mark Sedwell, 'Cabinet Secretary at the Blavatnik School of Government' ([gov.uk](https://www.gov.uk), 27th July 2020) [<https://www.gov.uk/government/speeches/cabinet-secretary-lecture-at-the-blavatnik-school-of-government>].

¹⁰ HM Government, 'Prime Minister announces merger of Department for International Development and Foreign Office' ([gov.uk](https://www.gov.uk), 16 June 2020) [<https://www.gov.uk/government/news/prime-minister-announces-merger-of-department-for-international-development-and-foreign-office>].

Some politicians, commentators, observers and columnists are pointing towards systemic issues within central government, some of which were highlighted by Gove and Sedwell in their recent speeches.¹¹ It is too early to say just how Whitehall and the structure of central government is going to change, but it is clear that fundamental change is on the near horizon.

¹¹ Tom McTague, 'How the Pandemic Revealed Britain's National Illness' (The Atlantic, 12 August 2020) [<https://www.theatlantic.com/international/archive/2020/08/why-britain-failed-coronavirus-pandemic/615166/>].