

**IN THE PROPOSED PROCEEDINGS IN THE WESTMINSTER MAGISTRATES'
COURT**

MAHSA TALIEFAR

Proposed Private Prosecutor

- V -

DOMINIC MCKENZIE CUMMINGS

Proposed Defendant

Introduction

- 1) We have been instructed to advise Masha Taliefar the Proposed Private Prosecutor ['the Private Prosecutor'] on:
- 2) Whether there are reasonable prospects of convicting DC for an offence of fraud by false representation under s.1 of the Fraud Act 2006 , or in the alternative for the common law offence of Misconduct in Public Office.

The relevant circumstances are in brief as follows: -

- a) Dominic Cummings held a Press conference at 10 Downing Street on 25th May 2020 from the 'Rose Garden' whereby he made numerous statements relating to his travel to the North East of England during lockdown together with further representations about his writing on the subject of corona viruses.
- b) during the currency of the Rose Garden Press conference DC stated :-

‘For years, I have warned of the dangers of pandemics. Last year I wrote about the possible threat of coronaviruses and the urgent need for planning;’

- c) Investigation into and around this statement suggested that DC had not in fact written about coronaviruses in 2019, rather evidence suggests that DC had manipulated his blogsite in or around April 2020 to falsely give the appearance that he had written on the subject in 2019;’
- d) we are instructed to consider whether such manipulation of a website as outlined above, together with the expression of a false statement concerning its contents could constitute a Fraud Act 2006 offence; and, if so, whether there are reasonable prospects of convicting DC for an offence of Fraud by false representation.

Background

Dominic Cummings

- 3) Dominic Cummings (DC) is a well-known British political strategist, during the currency of his career he has occupied various roles both within and external to government.
- 4) DC was born on the 25 November 1971 in Durham, where he was privately educated at Durham School. He attended Oxford University to read History at Exeter College, graduating in 1994.
- 5) He thereafter moved to Russia until 1997, where (according to his blog), he worked on ‘various projects’.¹ He perhaps most notably attempted to set up an airline flying from Samara to Vienna, which has been described as ‘spectacularly unsuccessful’.²

¹ <https://dominiccummings.com/about/>

² <https://www.ft.com/content/0bf8a910-372e-11ea-a6d3-9a26f8c3cba4>

- 6) From 1999-2002 DC worked as Research Director and then Campaign Director for *Business for Sterling*, a business lobby group which funded the 'No' campaign against Britain joining the single currency.
- 7) In 2002 DC worked as Director of Strategy for then leader of the Conservative party Iain Duncan Smith. He held this post for under a year, going on to publish an article in The Telegraph a year later entitled, 'Mr Duncan Smith is incompetent and must go'.³
- 8) In December 2003 DC founded the '*New Frontiers Foundation*', a staunchly anti-Europe think-tank which, *inter alia*, called for the ban on political advertising to be lifted.⁴ The think-tank folded shortly thereafter.
- 9) From 2004-2005 DC was involved in two campaigns: the campaign to prevent the enactment of the EU constitution and 'North East Says No' (NESNO), the campaign against a regional assembly in North East England. A video created by Cummings and distributed as part of the latter campaign states that a regional assembly would cost £1 million a week, followed by the text 'More doctors, not politicians'⁵.
- 10) In September 2007 DC took up a role as advisor to the Secretary of State for Education Michael Gove. He left the role in May 2010, returning in December of the same year. He held the post until January 2014.
- 11) In the build-up to the referendum on Britain's membership of the EU in 2016, DC 'ran'⁶ the official Vote Leave campaign. He was appointed Director on 18 September 2015, resigning on 23 February 2016.⁷ He then served as chief advisor to Prime Minister Boris Johnson from July 2019 – November 2020.
- 12) DC writes on his own blog,⁸ and has contributed to publications such as The Telegraph and The Spectator. In 2006 he had 'overall responsibility' for the Spectator website.

³ <https://www.telegraph.co.uk/comment/personal-view/3598057/Mr-Duncan-Smith-is-incompetent-and-must-go.html>

⁴ <https://www.theguardian.com/politics/2020/jan/21/dominic-cummings-thinktank-called-for-end-of-bbc-in-current-form>

⁵ <https://www.theguardian.com/politics/2019/nov/12/dominic-cummings-honed-strategy-2004-vote-north-east>

⁶ <https://dominiccummings.com/about/>

⁷ <https://find-and-update.company-information.service.gov.uk/company/09785255/officers>

⁸ <https://dominiccummings.com/>

13) According to his blog, DC runs *North Wood*, a communications/management/political consultancy. He was formerly Director of *Dynamic Maps*, an IT consultancy incorporated in October 2017 and dissolved in October 2020.⁹ Since 2010 he has been Director of *Kluthe Ltd*, the company which owned *Klute* nightclub in Durham from 2010-2013.

DC's involvement with the Propagation of false information

14) In 2006 DC was fired from his job at *The Spectator* after a cartoon purporting to depict the Prophet Mohammed with a bomb for a turban was uploaded to the publication's website, for which DC had 'overall responsibility'.¹⁰ The image was accompanied by text stating 'as European populations die and Muslim populations grow, (...) the balance of power shifts every day', iterating the core essence of the 'Great Replacement', a popular conspiracy theory amongst white nationalists.¹¹

15) DC is also acknowledged as adhering to theories which equate hereditary characteristics with intelligence, and intelligence with the right to rule. As advisor to the Secretary of State for Education in 2013, DC authored a 237-page long paper on 'education and political priorities' in which he refers to 'gaps in wealth and power created partly by unequally distributed heritable characteristics'.¹²

16) As campaign director of Vote Leave in 2016, DC was criticised for the campaign's creation and dissemination of leaflets prominently displaying the NHS logo. The logo was printed on the top right corner of the campaign leaflets, consistent with NHS official branding. The leaflets were left in wards at Guy's Hospital in central London contrary to the hospital's policy. The then Chair of the Treasury Select Committee, Andrew Tyrie, commented that

⁹ <https://find-and-update.company-information.service.gov.uk/company/11000656/persons-with-significant-control>

¹⁰ <https://www.theguardian.com/media/2006/feb/02/newmedia.race>

¹¹ The theory holds that the white European population is at risk of being culturally 'replaced' by Muslim people through mass migration from Africa and the Middle East, and has been [recognised by experts](#) as being based largely on misrepresented data and debunked science.

¹² https://www.telegraph.co.uk/multimedia/archive/02702/some-thoughts-on-e_2702765a.pdf

the campaign should reconsider putting out literature as ‘misleading’ as the leaflets, which could be perceived as official NHS publications.¹³ NHS lawyers threatened to sue Vote Leave for misusing the NHS brand.¹⁴

17) Andrew Tyrie also referred to the majority of figures published on the Vote Leave website as either ‘misleading or inaccurate’. One such figure stated that intra-EU trade had fallen since 1999 when official data showed that it had in fact increased by 39%.¹⁵

18) The Treasury Committee further probed DC on Vote Leave’s implied claim that upon leaving the EU the UK would receive £350m a week to be channelled into the NHS. The campaign, run by DC, was responsible for advertisements plastered on the sides of buses stating ‘We send the EU £350 million a week / let’s fund our NHS instead’. The figure of £350 million is in fact incorrect and confuses both gross and net contributions.¹⁶

19) The advertisements nevertheless succeeded in their goal of influencing the public. A study conducted by Kings College London showed that 42% of people who had seen the advert (either on the buses or online through targeted advertising) believed the claim to be true (as of October 2018).¹⁷ The UK Statistics Authority wrote to Vote Leave during the campaign to state that the claim was ‘misleading and undermines trust in official statistics’.¹⁸

¹³ <https://www.youtube.com/watch?v=qvRHIEjWRSE>

¹⁴ <https://www.theguardian.com/politics/2016/mar/05/vote-leave-threatened-over-use-of-nhs-logo>

¹⁵ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods_-_a_statistical_picture

¹⁶ <https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2017/09/Letter-from-Sir-David-Norgrove-to-Foreign-Secretary.pdf>

¹⁷ <https://www.kcl.ac.uk/policy-institute/assets/brexit-misperceptions.pdf>

¹⁸ <https://uksa.statisticsauthority.gov.uk/news/uk-statistics-authority-statement-on-the-use-of-official-statistics-on-contributions-to-the-european-union/>

20) DC went on to author a lengthy blog post, published by The Spectator in January 2017, in which he attributes the campaign's success to the false statistic. He writes, 'Pundits and MPs kept saying 'why isn't Leave arguing about the economy and living standards'. They did not realise that for millions of people, *£350m/NHS was about the economy and living standards – that's why it was so effective*. It was clearly the most effective argument not only with the crucial swing fifth but with *almost every demographic*. Even with UKIP voters it was level-pegging with immigration. Would we have won without immigration? No. *Would we have won without £350m/NHS? All our research and the close result strongly suggests No.*'¹⁹

Contempt of Authority

21) Under DC's leadership, Vote Leave channelled a donation of £625,000 to one of its official youth groups, BeLeave, unable to keep it owing to official campaign spending limits. BeLeave had already registered itself as a separate organisation upon the advice of compliance lawyers in order to receive a smaller donation from Vote Leave (this donation did not manifest). A member of BeLeave later commented that, 'Vote Leave didn't really give us that money. They just pretended to. We had no control over it. They cheated.' The donation became the subject of two Electoral Commission investigations,²⁰ an inquiry by the Information Commissioner's Office, and a judicial review.²¹

22) The Electoral Commission found that Vote Leave had broken electoral law, exceeding its spending limit by nearly £500,000. Vote Leave was fined £61,000 and BeLeave £20,000. The Chief Executive of the Electoral Commission further commented that, 'We have in

¹⁹ <https://www.spectator.co.uk/article/dominic-cummings-how-the-brexit-referendum-was-won>

²⁰ <https://www.theguardian.com/politics/2017/nov/20/electoral-commission-launches-inquiry-into-leave-campaign-funding>

²¹ <https://www.judiciary.uk/wp-content/uploads/2018/09/co-4908-2017-good-law-project-v-electoral-commission-final-judgment.pdf>

fact issued a record fine for failure to cooperate with a statutory notice because we found it so difficult to get Vote Leave to work with us in this investigation'.²²

23) Vote Leave was also fined £40,000 by the Information Commissioner's Office for sending out 194,154 text messages during the campaign promoting its goals, most of which also contained a link to the Vote Leave website.²³

24) As part of the investigations DC was formally summoned by the Digital, Culture, Media and Sport Select Committee to give evidence, which he ignored. In March 2019 the Privileges Committee concluded that DC committed...

'a contempt both by his initial refusal to obey the DCMS Committee's order to attend it and by his subsequent refusal to obey the House's Order of 7 June.'

25) The Committee added that,

*'we regret the tone which Mr Cummings adopted in his dealings with the DCMS Committee and in the comments posted on his blog. This attitude did not serve the interests of civilised public debate.'*²⁴

26) As advisor to then Education Secretary Michael Gove in 2012, DC was at the centre of allegations of a culture of 'intimidation' and 'laddism' by a female staffer of 27 years' service. The civil servant lodged a complaint singling DC out as 'widely known to use obscene and intimidating language'. The official grievance process led to a settlement of £25,000.²⁵

²² <https://www.theguardian.com/politics/2018/jul/17/vote-leave-fined-and-reported-to-police-by-electoral-commission-brexite>

²³ <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2019/03/ico-fines-vote-leave-40-000-for-sending-unlawful-text-messages/>

²⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmprivi/1490/149003.htm>

²⁵ <https://www.independent.co.uk/news/education/education-news/dump-f-ing-everyone-inside-story-how-michael-gove-s-vicious-attack-dogs-are-terrorising-dfe-8497626.html>

- 27) In 2019, Treasury aide Sonia Khan was dismissed and escorted from Downing Street by an armed policeman. Cummings accused her of misleading him over her contact with certain individuals close to the former chancellor Philip Hammond.²⁶ At the time, the terms of employment for special advisers dictated that only the Prime Minister had the authority to make dismissals. This was changed in the aftermath of Khan's dismissal to give DC the ultimate 'responsibility for disciplinary matters'.²⁷
- 28) The trade union representing Khan announced that it would be pursuing a claim for unfair dismissal and sex discrimination, and that both PM Boris Johnson and DC would be expected to give evidence and potentially subjected to cross-examination. In November 2020 the claim was settled out of court.²⁸
- 29) In March 2020, DC who has qualifications in history and not in any scientific discipline, received criticism for his involvement in meetings of the Scientific Advisory Group for Emergencies (SAGE) pertinent to the UK covid response. Members of the independent and apolitical scientific group voiced concern that DC was attempting to influence the group's findings, with one member commenting that 'he clearly wasn't an observer'.²⁹

The Covid 19 crisis

- 30) On 31 December 2019, the World Health Organisation China Country Office was informed that authorities in China had identified a new type of coronavirus³⁰, at the time China's

²⁶ <https://www.theguardian.com/politics/2020/feb/15/boris-johnson-dominic-cummings-backlash-sacking-sonia-khan>

²⁷ <https://www.theguardian.com/politics/2020/nov/13/special-adviser-sacked-by-dominic-cummings-to-receive-payoff>

²⁸ <https://www.bbc.co.uk/news/uk-politics-54929809>

²⁹ <https://www.telegraph.co.uk/politics/2020/04/29/dominic-cummings-tried-influence-lockdown-advice-sage-members/>

³⁰ <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>

relevant authorities had studied 44 cases of the new disease which appeared to have affected people who had some nexus to a wet market in the Wuhan province of china.³¹

31) By 20th January 2020 however further cases of the new disease had been discovered in Chinese citizens who had no connection to Wuhan. This discovery confirmed that the virus's transmission was from human to human.

32) On the 30th January 2020 the Director-General of the WHO declared the novel coronavirus outbreak to be a public health emergency of international concern (PHEIC). By this stage there were 83 cases in 18 countries outside China and as yet no recorded deaths. Germany, Japan, the United States and Vietnam had discovered their own cases of human-to-human transmission of the Novel Corona Virus outside of mainland China³²

33) Reacting to the potential threat of the virus the UK government convened The Scientific Advisory Group for Emergencies (Sage) to help inform the UK response strategy.

34) Sage is the emergency group for science, It consists of a cross disciplinary group of experts from across the scientific spectrum including epidemiologists, clinical and vaccine experts, forecasting and modelling experts all of whom feed their research and data into Sage.

35) Sage's role is to collate the acquired data and research and attempt to provide consensus recommendations to the government on all the key issues based on the body of existing scientific evidence presented by its members. Since January 2020 sage have been meeting

³¹ <https://www.ecdc.europa.eu/sites/default/files/documents/Risk%20assessment%20-%20pneumonia%20Wuhan%20China%2017%20Jan%202020.pdf>

³² [Statement on the second meeting of the International Health Regulations \(2005\) Emergency Committee regarding the outbreak of novel coronavirus \(2019-nCoV\) \(who.int\)](#)

bi-weekly headed by Chief Scientific Advisor Sir Patrick Vallance and England's Chief Medical Officer Professor Chris Whitty.³³

36) By the 15th February 2020 continental Europe had begun to record the first deaths attributable to Covid, the UK had at this stage recorded 9 positive cases with china recording over 66000 cases and 1500 deaths.³⁴

37) In an effort to minimise the spread of the virus Chinese authorities implemented a series of unprecedented measures limiting the movement of people in Wuhan and other cities. The Chinese also initiated a viral detection programme to test tens of millions of its citizens. The combination of its efforts were designed to minimise the amount of human to human contact and thus attempt to limit the spread of the disease in the Chinese population.³⁵

38) As the number of cases present in other countries outside of China grew, the team leaders of the WHO-China Joint Mission on COVID-19 held a press conference on the 24th Feb 2020 where they warned³⁶ :-

"much of the global community is not yet ready, in mindset and materially, to implement the measures that have been employed to contain COVID-19 in China".

39) The Mission stressed that

"to reduce COVID-19 illness and death, near-term readiness planning must embrace the large-scale implementation of high-quality, non-pharmaceutical public health measures", such as case detection and isolation, contact tracing and monitoring/quarantining and community engagement.

³³ [What is the Scientific Advisory Group for Emergencies and who are the experts behind the government's Covid-19 response? | ITV News](#)

³⁴ [First fatality in Europe confirmed – as it happened | World news | The Guardian](#)

³⁵ [The effect of control strategies to reduce social mixing on outcomes of the COVID-19 epidemic in Wuhan, China: a modelling study - The Lancet Public Health](#)

³⁶ [who-china-joint-mission-on-covid-19-final-report.pdf](#)

ITALY

40) The Italian government on the 31st January 2020 decided that part of its response to the covid threat would be to suspended all flights to and from china and declaring a state of national emergency ³⁷. By the 9th March 2020, the [government of Italy](#) imposed a national [quarantine](#), restricting the movement of the entire population except for necessity, work, and health circumstances³⁸, At the time of the decree, over 5,800 cases of coronavirus had been confirmed in Italy, with 233 dead³⁹

SPAIN

41) On 14th March the Spanish government formally declared a state of emergency over the coronavirus and mandated a national lockdown. All residents were required to remain in their normal residences except to purchase food and medicines, or to work or attend emergencies.

42) Lockdown restrictions also mandated the temporary closure of non-essential shops and businesses, including bars, restaurants, cafes, cinemas and commercial and retail businesses The announcement came following significant increases in the number of

³⁷ [Italy: Air traffic suspended to and from China due to novel coronavirus as of January 30 \(garda.com\)](#)

³⁸ [Coronavirus Italy: PM extends lockdown to entire country | World news | The Guardian](#)

³⁹ [Coronavirus: quarter of Italy's population put in quarantine as virus reaches Washington DC | World news | The Guardian](#)

confirmed cases of [COVID-19](#)⁴⁰. the number of cases increasing by 66% from 3,146 cases to 5,232 on 13 March 2020.⁴¹

FRANCE

43) Similarly in France , Emmanuel Macron On the 16th March, announced mandatory home **lockdown** for 15 days starting at noon the following day. by this stage France had recorded over 100 000 suspected cases of covid ⁴²

ENGLAND

- **Boris Johnsons evolving approach to the Covid Pandemic**

3rd February

44) The Prime Minister Boris Johnson gave a speech in Greenwich on the 3 February 2020 where he proffered the following opinion on other nations approach of lockdown as a response to the corona virus threat: -

“.....we are starting to hear some bizarre autarkic rhetoric, when barriers are going up, and when there is a risk that new diseases such as coronavirus will trigger a panic and a desire for market segregation that go beyond what is medically rational to the point of doing real and unnecessary economic damage, then at that moment humanity needs some government somewhere

⁴⁰ [Spain orders nationwide lockdown to battle coronavirus | World news | The Guardian](#)

⁴¹ [SPAIN IN A STATE OF ALARM \(guidepost.es\)](#)

⁴² [Macron announces 15-day lockdown in French 'war' on coronavirus \(france24.com\)](#)

*that is willing at least to make the case powerfully for freedom of exchange, some country ready to take off its Clark Kent spectacles and leap into the phone booth and emerge with its cloak flowing as the supercharged champion, of the right of the populations of the earth to buy and sell freely among each other....*⁴³

45) The statement was a clear criticism of other nations approach of locking down their citizenry and borders as a mitigating measure to the corona virus threat. PM Johnson then went on to float the concept of 'herd immunity' on the 5th March when appearing on the popular UK breakfast tv show 'This Morning' stating:

5th March

*"... one of the theories is, that perhaps you could take it on the chin, take it all in one go and allow the disease, as it were, to move through the population, without taking as many draconian measures. I think we need to strike a balance, I think it is very important, we've got a fantastic NHS, we will give them all the support that they need, we will make sure that they have all preparations, all the kit that they need for us to get through it. But I think it would be better if we take all the measures that we can now to stop the peak of the disease being as difficult for the NHS as it might be, I think there are things that we may be able to do."*⁴⁴

46) Such was Johnsons commitment to the concept of 'herd immunity' that he publicly announced on the 3rd March 2020 :-

*"...I was at a hospital the other night where I think a few there were actually coronavirus patients and I shook hands with everybody, you'll be pleased to know, and I continue to shake hands..."*⁴⁵

13th March

⁴³ [PM speech in Greenwich: 3 February 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020)

⁴⁴ [Here is the transcript of what Boris Johnson said on This Morning about the new coronavirus - Full Fact](https://www.bbc.com/news/health-55444444)

⁴⁵ ['I shook hands with everybody,' says Boris Johnson weeks before coronavirus diagnosis - YouTube](https://www.youtube.com/watch?v=55444444)

47) The UK's commitment to 'herd immunity' was further confirmed by Sir Patrick Vallance, England's chief scientist and chair of SAGE, where on the 13th March 2020 he explained that he hoped the Government's approach to tackling coronavirus will create a 'herd immunity' to the disease.

He further stated:

'If you suppress something very, very hard, when you release those measures it bounces back and it bounces back at the wrong time...

*'Our aim is to try and reduce the peak, broaden the peak, not suppress it completely; also, because the vast majority of people get a mild illness, to build up some kind of herd immunity so more people are immune to this disease and we reduce the transmission, at the same time we protect those who are most vulnerable to it... 'Those are the key things we need to do.'*⁴⁶

48) England's approach of 'herd immunity' came under wide and sustained international criticism predominantly because it was diametrically opposed to the WHO's recommendations and differed from the approach taken by most other countries. WHO spokeswoman Margaret Harris stating:-

*'We can talk theories, but at the moment we are really facing a situation where we have got to look at action.'*⁴⁷

49) As part of SAGE's ongoing advisory role to government, a mathematical model of the likely impact of a range of non-pharmaceutical measures to reduce COVID-19 mortality was undertaken by Professor Neil Ferguson of Imperial College⁴⁸.

50) Professor Ferguson himself is a British epidemiologist and professor of mathematical biology. He is the director of the Jameel Institute for Disease and Emergency Analytics (J-IDEA), director of the MRC Centre for Global Infectious Disease Analysis, and head of the Department of Infectious Disease Epidemiology in the School of Public Health as well as Vice-Dean for Academic Development in the Faculty of Medicine.

⁴⁶ [Coronavirus: science chief defends UK plan from criticism | World news | The Guardian](#)

⁴⁷ <https://metro.co.uk/2020/03/14/world-health-organisation-questions-uk-coronavirus-approach-12397312/>

⁴⁸ [Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf](#)

- 51) More particularly Professor Ferguson has been involved in the modelling of various virus outbreaks including the 2001 United Kingdom foot-and-mouth outbreak, the swine flu outbreak in 2009 in the UK, the 2012 Middle East respiratory syndrome coronavirus outbreak and the Ebola epidemic in Western Africa in 2016.⁴⁹
- 52) Professor Ferguson's report entitled 'Report 9: Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand' predicted that in a worst-case scenario (where no measures were put in place), deaths over the following two years could reach more than 500,000⁵⁰.
- 53) Multiple attendees of Sage confirmed that Dominic Cummings who has no scientific qualifications had been taking part in meetings of the group since February 2020⁵¹
- 54) In response to the findings in the report the Johnson government immediately executed a u -turn on the policy of 'Herd immunity' and instead adopted an approach more consistent with the WHO recommendations on Corona virus management.⁵²

23rd March

- 55) Monday 23rd March following a convening of the Sage group where Dominic Cummings was present⁵³ , Boris Johnson made a statement broadcast on national television announcing strict new coronavirus restrictions⁵⁴

⁴⁹ [Neil Ferguson \(epidemiologist\) - WikiMili, The Best Wikipedia Reader](#)

⁵⁰ <https://www.nature.com/articles/d41586-020-01003-6>

⁵¹ <https://news.sky.com/story/coronavirus-dominic-cummings-attended-meetings-of-scientific-advisory-group-11978508>

⁵² <https://fortune.com/worlds-greatest-leaders/2020/neil-ferguson/>

⁵³ [Who's who on secret scientific group advising UK government? | Coronavirus | The Guardian](#)

⁵⁴ [Prime Minister's statement on coronavirus \(COVID-19\): 23 March 2020 - GOV.UK \(www.gov.uk\)](#)

- 56) The kernel of the advice from government was 'Stay at Home'. To ensure this instruction was obeyed by everybody in England, a set of regulations came into force at 1pm on 26th March 2020 (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 [SI 2020 No.350])⁵⁵ which were enacted under the Control of Public Health (Control of Disease) Act 1984.
- 57) These restrictions required people to stay at home except for in very limited circumstances. Many businesses were forced to close and any gatherings of more than two people in public were prohibited. Wales, Scotland and Northern Ireland all announced similar measures on the same day.
- 58) The rationale behind lockdown was to reduce the amount of human-to-human contact within the UK population. This it was hoped would lead to a reduction in the ability of the virus to transmit between people and thus limit its ability to infect a large body of people in a short period of time. It was hoped that if the transmission rate of the virus, the 'R' rate, could be kept below 1 then there would be no exponential growth in infection. The numbers of people hospitalised by the virus could then be kept within the care capacity range of the NHS's ability to cope.
- 59) The government in recognition of the fact that many businesses would be forced to close announced measures to make funds available to businesses. Such funds were extended to businesses through grants and loans and vicariously to employees through the furlough scheme. This was designed to provide up to 80% of employee wages (capped) for the duration of the lockdown. The schemes it was recognised would cost the taxpayer hundreds of billions of pounds, however, this was designed to mitigate against lasting economic damage to many sectors of the economy. It was assessed that the cost was a

⁵⁵ [Coronavirus: Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020 effective from 13.00 on 26 March 2020 – 3 July 2020 | The Crown Prosecution Service \(cps.gov.uk\)](#)

necessary burden to shoulder in order to allow the public to adhere to lockdown rules and stay in their homes for all but the most necessary of reasons.

27th March 2020

60) Within one day of the corona virus restrictions coming into effect PM Boris Johnson himself developed covid symptoms and tested positive for the corona virus ⁵⁶ , he declared that he would be self-isolating through his account on the social media platform twitter. On the same day, the health secretary Matt Hancock also tested positive for covid and stated the following the same evening: -

“Thankfully my symptoms are mild and I’m working from home & self-isolating. Vital we follow the advice to protect our NHS & save lives.”⁵⁷

61) By the 30th March 2020 downing street confirmed that Dominic Cummings was showing symptoms of coronavirus, and consequently he too was self-isolating at his home in London.⁵⁸

62) The corona virus regulations allowed the UK police to issue fines to people caught breaking the rules without lawful excuse. between 27th March and may 25th Norfolk police had issued 368 fixed penalty fines , over a similar period the Met Police had issued 1035 such penalties.

63) The corona virus pandemic of 2020 and the UK governments evolving position on the matter has been the subject of international and domestic political controversy. The UK has endured the worst death toll from covid 19 in Europe⁵⁹, such poor performance

⁵⁶ <https://twitter.com/BorisJohnson/status/1243496858095411200?s=20>

⁵⁷ <https://www.independent.co.uk/news/uk/politics/coronavirus-matt-hancock-boris-johnson-test-positive-covid-19-symptoms-a9430031.html>

⁵⁸ <https://www.independent.co.uk/news/uk/politics/dominic-cummings-coronavirus-test-symptoms-positive-latest-a9433331.html>

⁵⁹ [Covid-19: UK death toll overtakes Italy's to become worst in Europe | The BMJ](#)

resulting in the deaths of over 120k citizens has been attributed to the UK governments mishandling of the crisis⁶⁰. Central to the management of this crisis has been Boris Johnson and Dominic Cummings.

Notable Corona Virus Lockdown Breaches UK.

Scotland - Dr Catherine Calderwood

64) Scotland had, in line with England, issued an order to lockdown their territory on the 23rd March 2020.

65) However, Scotland's chief medical officer Dr Catherine Calderwood, who had been instrumental in appealing to the Scottish public to adhere to the lockdown rules, had herself been caught breeching lockdown rules. She had visited her second home some 100 miles from her primary abode on two separate occasions in violation of the lockdown rules.

66) The Scottish first minister, Nicola Sturgeon stated that Dr Calderwood's mistake:-

*"risks distracting from and undermining confidence in the government's public health message at this crucial time.... That is not a risk either of us is willing to take."*⁶¹

67) Dr Calderwood tendered her resignation as Scotland's chief medical officer on the 5th April 2020

England – Professor Neil Ferguson

68) One month later on the 5 May 2020 revelations emerged that Professor Neil Ferguson a member of Sage and the author of the report which caused the English government to

⁶⁰ [A grim accounting of the UK's virus mishandling | Financial Times](#)

⁶¹ [Coronavirus: Scotland's chief medical officer resigns over lockdown trips - BBC News](#)

abandon herd immunity and implement lockdown rules had himself been in breach of the rules. He had tested positive for corona virus in mid-March but had on two occasions allowed his mistress to visit his home on 30 March and 8 April again in clear contravention of the corona regulations.

69) Professor Ferguson tendered his resignation from sage, and of his actions stated the following: -

*"I accept I made an error of judgment and took the wrong course of action. I have therefore stepped back from my involvement in Sage...I deeply regret any undermining of the clear messages around the continued need for social distancing to control this devastating epidemic.
The government guidance is unequivocal, and is there to protect all of us."*⁶²

Dominic - Cummings and Barnard Castle.

Timeline of events

March 30:

Dominic Cummings taken ill

70) Downing Street confirmed that in addition to Boris Johnson, Dominic Cummings had developed symptoms of covid19 and would be self-isolating in London over the next 7 days . ⁶³

March 31:

⁶² <https://www.theguardian.com/uk-news/2020/may/05/uk-coronavirus-adviser-prof-neil-ferguson-resigns-after-breaking-lockdown-rules>

⁶³ <https://www.ft.com/content/c890cc19-b92f-47f5-a5b1-12dae9d5eec4>

Police made aware of Mr Cummings' trip

71) A spokesman for Durham Constabulary stated:

“On Tuesday, March 31, our officers were made aware of reports that an individual had travelled from London to Durham and was present at an address in the city.... Officers made contact with the owners of that address who confirmed that the individual in question was present and was self-isolating in part of the house”. “In line with national policing guidance, officers explained to the family the guidelines around self-isolation and reiterated the appropriate advice around essential travel.”⁶⁴

April 5:

Mr Cummings is 'spotted in his father's garden' in Durham

72) Neighbours of Robert Cummings, Dominic Cummings Father, reported to the mirror newspaper that they had seen DC in his father’s garden with a small child. ⁶⁵

April 12

Barnard castle

73) Days later Robin Lees, a retired chemistry teacher from Barnard Castle, claimed he saw Mr Cummings and his family walking by the River Tees in the town before getting into a car around lunch time on April 12, the date is significant as it happens to be the birthday of Mary Wakefield, DC’s wife⁶⁶

⁶⁴ <https://www.theguardian.com/politics/2020/may/22/dominic-cummings-durham-trip-coronavirus-lockdown>

⁶⁵ [Dominic Cummings investigated by police after breaking coronavirus lockdown rules - Mirror Online](#)

⁶⁶ <https://www.mirror.co.uk/news/politics/dominic-cummings-ignored-coronavirus-lockdown-22075857>

April 14:

Mr Cummings returns to work

74) Mr Cummings returns to work in London for the first time since news he was suffering from coronavirus emerged.⁶⁷

May 22:

News breaks of Mr Cummings trip to Durham

75) The Daily Mirror and the Guardian newspapers break the story that Dominic Cummings had made a trip to Durham with his family during lockdown.⁶⁸

May 23-24

Calls for Resignation/ Sacking of DC

76) In response to the revelations that Dominic Cummings had taken his family to Durham during lockdown 45 conservative MP's demand that Dominic Cummings resign or be dismissed from his position. Consternation was expressed by many MP's as both Dr Catherine Calderwood and Prof. Neil Ferguson had voluntarily resigned recently over revelations that they had not adhered to lockdown rules yet DC resisted such a move himself. A list of the relevant MP's follows (appendix 1 contains a copy of each of their statements on the matter)

<ul style="list-style-type: none">• Mark Garnier <i>Wyre Forest</i>• Andrew Percy <i>Brigg and Goole</i>	<ul style="list-style-type: none">• Philip Davies <i>Shipley</i>• Julian Sturdy <i>York Outer</i>• Alec Shelbrooke <i>Elmet and Rothwell</i>
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⁶⁷ [Cummings back in Downing Street after recovering from suspected coronavirus | Express & Star \(expressandstar.com\)](https://www.expressandstar.com/news/uk-politics/2020/05/23/cummings-back-in-downing-street-after-recovering-from-suspected-coronavirus/)

⁶⁸ <https://twitter.com/guardian/status/1263937728644820992?s=20>

<ul style="list-style-type: none"> • Elliot Colburn <i>Carshalton and Wallington</i> • Jackie Doyle-Price <i>Thurrock</i> • Bob Neill <i>Bromley and Chislehurst</i> • Laurence Robertson <i>Tewkesbury</i> • George Freeman <i>Mid Norfolk</i> • James Gray <i>North Wiltshire</i> • Craig Whittaker <i>Calder Valley</i> • Robert Largan <i>High Peak</i> • Andrew Selous <i>South West Bedfordshire</i> • Bob Stewart <i>Beckenham</i> • Andrew Jones <i>Harrogate and Knaresborough</i> • David Simmonds <i>Ruislip, Northwood and Pinner</i> • Giles Watling <i>Clacton</i> • Pauline Latham <i>Mid Derbyshire</i> • Henry Smith <i>Crawley</i> • Stephen Metcalfe <i>South Basildon and East Thurrock</i> • Royston Smith <i>Southampton Itchen</i> • Karen Bradley <i>Staffordshire Moorlands</i> • Harriett Baldwin <i>West Worcestershire</i> • Roger Gale <i>North Thanet</i> • Martin Vickers <i>Cleethorpes</i> 	<ul style="list-style-type: none"> • Mark Harper <i>Forest of Dean</i> • Stephen Hammond <i>Wimbledon</i> • Simon Hoare <i>North Dorset</i> • Simon Jupp <i>East Devon</i> • David Warburton <i>Somerton and Frome</i> • Jeremy Wright <i>Kenilworth and Southam</i> • Paul Maynard <i>Blackpool North and Cleveleys</i> • Peter Bone <i>Wellingborough</i> • Robert Goodwill <i>Scarborough and Whitby</i> • Damian Collins <i>Folkestone and Hythe</i> • Mark Pawsey <i>Rugby</i> • Robert Syms <i>Poole</i> • Tim Loughton <i>East Worthing and Shoreham</i> • Jason McCartney <i>Colne Valley</i> • Peter Aldous <i>Waveney</i> • John Stevenson <i>Carlisle</i> • Caroline Nokes <i>Romsey and Southampton North</i> • Steve Baker <i>High Wycombe</i> • Douglas Ross <i>Moray</i>
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May 24

Boris Johnson backs Dominic Cummings

77) Amid mounting pressure calling for DC to resign or be dismissed, the PM in a televised statement confirmed that he had extensively discussed the circumstances of DC's travel to Durham and concluded that he believed Mr Cummings had "no alternative" but to travel from London to the North East for childcare... when both he and his wife were about

to be incapacitated by coronavirus". He further stated that "In every respect, he [DC] has acted responsibly, legally and with integrity,"⁶⁹ . The public statement in effect put paid to calls for DC's dismissal.

May 25

DC Rose Garden interview

78) Dominic Cummings called a press conference at the Rose Garden within 10 Downing St. In the conference, DC confirmed he made a trip to Barnard Castle , but sought to defend his decision by explaining the trip was only made as a 'test run', so he could test his eyesight before making the return journey to London.

79) Specifically, DC stated: -

- a) *"My wife was very worried, particularly as my eyesight seemed to have been affected by the disease,"*
- b) *"We agreed that we should go for a short drive to see if I could drive safely, we drove for roughly half an hour and ended up on the outskirts of Barnard Castle town.*
- c) *"We did not visit the castle, we did not walk around the town."*⁷⁰

80) In addition to the above DC made the following positive assertions about his pre pandemic writing on the issue of corona viruses-

- a) *"Last year I wrote about the possible threat of coronaviruses and the urgent need for planning"*

⁶⁹ [Boris Johnson backs key aide Dominic Cummings in lockdown row - BBC News](#)

⁷⁰ Appendix 3

b) *“only last year I wrote explicitly about the danger of Coronaviruses”.*⁷¹

81) Robin Lees , the witness who saw Mr Cummings at Barnard Castle, told ITV News in response to Mr Cummings interview there is "nothing wrong with my eyesight," adding, "not sure driving to test your eyesight is on".⁷²

May 26

Minister resigns over Downing St response to Cummings

82) Douglas Ross, the MP for Moray, stepped down as a Scotland Office minister over the Cummings affair. He stated : -

a) *“While the intentions may have been well meaning, the reaction to this news shows that Mr Cummings’ interpretation of the government advice was not shared by the vast majority of people who have done as the government asked,”*

b) *“I have constituents who didn’t get to say goodbye to loved ones; families who could not mourn together; people who didn’t visit sick relatives because they followed the guidance of the government. I cannot in good faith tell them they were all wrong and one senior adviser to the government was right.”*⁷³

28th May 2020

83) Durham police accepts that DC may have breached lockdown rules however they confirmed they would not be taking any further action.⁷⁴

⁷¹ Appendix 3

⁷² [PM and top aide say coronavirus affected their eyesight | ITV News](#)

⁷³ www.theguardian.com/politics/2020/may/26/junior-minister-resigns-over-dominic-cummings-lockdown-trip-douglas-ross

⁷⁴ [Durham Police find Dominic Cummings may have breached guidance with Barnard Castle trip - Teesside Live \(gazettelive.co.uk\)](http://Durham%20Police%20find%20Dominic%20Cummings%20may%20have%20breached%20guidance%20with%20Barnard%20Castle%20trip%20-%20Teesside%20Live%20(gazettelive.co.uk))

5th February 2021

84) Nazir Afzal a former chief prosecutor for the Crown Prosecution Service, compiled a 255-page dossier outlining a route to a prosecution of DC for his trip to Durham. The dossier was submitted to Durham Police however having considered the material Durham Police confirmed they would be taking no further action. In making this decision they stated : -

- a) *“Durham Constabulary has considered your submissions and the allegations raised that are relevant to the force’s area of responsibility.*
- b) *“We have considered all of the material provided. However, it does not change our decision from that outlined in our press release dated 28 May in respect of Mr Dominic Cummings, and we take a similar view in respect of his wife Mary Wakefield.*
- c) *“We do not consider the relevant tests are made out in relation to any potential offences raised within your submission. Therefore, Durham Constabulary will be taking no further action.”⁷⁵*

85) To date, Dominic Cummings has faced no legal action over any of his activities relating to his trip to Durham during lockdown or his subsequent statements concerning the same.

Legal Opinion – Fraud Act 2006 / Misconduct in Public Office

Fraud Act 2006

86) In this advice we have been asked to focus on the particular statements made by Dominic Cummings in his Rose Garden interview relating to his assertions that he wrote about Corona viruses prior to the advent of the pandemic.

⁷⁵ <https://www.independent.co.uk/news/uk/politics/dominic-cummings-lockdown-durham-police-b1798462.html>

87) We have been instructed to analyse the statements to test for their faithfulness to reality and provide a legal opinion on whether the statements made, if false, amount to a criminal offence in English law.

88) The day after Dominic Cummings Rose Garden interview, an article appeared in the BBC⁷⁶ intimating that DC had not in fact written about corona viruses previous to the advent of the pandemic, rather it suggested that DC had manipulated his personal blog so as to make it appear as though he had done so.

89) We instructed Digital Forensics Ltd to analyse the blog post of Mr Cummings and ascertain whether or not references to corona viruses presently contained in the blog articles had been written in 2019 prior to the pandemic or whether they had been inserted after the pandemic had already taken hold.⁷⁷

90) Digital Forensics were able to establish that indeed the original blog posts made by DC in 2019 contained no reference to corona viruses and that the blog had in fact been changed on a date ranging from between the 8th of April 2020 to the 3rd of May 2020. The changes made to the blog were made in order to include reference to corona viruses. The report concludes that further indicators suggest that the actual date where such changes were made may well have been the 14th April 2020, the day Mr Cummings was known to have returned to work in London.

91) Given the findings by Digital Forensics the following statements made by Dominic Cummings on the 25th May 2020 are likely to be untrue⁷⁸: -

⁷⁶ <https://www.bbc.co.uk/news/business-52808059>

⁷⁷ Digital Forensics Report – appendix

⁷⁸ Appendix 3

a) *"Last year I wrote about the possible threat of coronaviruses and the urgent need for planning"*

b) *"only last year I wrote explicitly about the danger of Coronaviruses".*

92) Where a statement has been made which is false an appropriate offence which may be engaged is 'fraud by false representation'.

Constituent Elements of the Offence

93) The essential elements of the offence of fraud by false representation contrary to s. 1 of the Fraud Act 2006 (in breach of s. 2) are:

(1) (a) *dishonestly making a false representation;*

(b) *intending, by the making of the representation*

(i) *to make a gain for himself or another; or*

(ii) *to cause loss to another or to expose another to a risk of loss.*

(2) *A representation is false if:*

(a) *it is untrue or misleading; and*

(b) *the person making it knows that it is, or might be, untrue or misleading.*

Applying the test:

(1) **Dishonesty**

94) The statute requires that the defendant “dishonestly makes” a false representation. Dishonesty was considered by the Court of Appeal (Criminal Division) in *R v Booth; R v Barton* [2020] EWCA Crim 575 where they approved the formulation of the test for dishonesty contained in the Supreme Court decision in *Ivey v Genting Casinos (UK) (trading as Cockfords Club)* [2018] AC 39. The formulation for the test of dishonesty is as follows:

The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 and by Lord Hoffmann in *Barlow Clowes* [2006] 1 WLR 1476, para 10 [...]. When dishonesty is in question the fact-finding tribunal must **first ascertain (subjectively) **the actual state of the individual's knowledge or belief as to the facts**. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but **it is not an additional requirement that his belief must be reasonable**; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the **question whether his conduct was dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people**. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'**

95) Given the focus on the objective test of dishonesty, we do not consider that it would be difficult to find a prima facie case of dishonesty with respect to Dominic Cummings Rose Garden statements.

96) We have extensively searched online for any other articles or comments made by DC relating to corona viruses prior to 2020 and can find no other expression except for those contained in his own blog. If it is established that the comments made by DC in the Rose Garden interview are referencing his own blog alone, then the representations made by DC in the Rose Garden would, in our view, be misleading and therefore dishonest. The Rose Garden comments would constitute dishonesty for the purpose of the offence on the basis if that if DC has manipulated or knowingly caused his blog to be manipulated, he would know that what he had said was untrue.

97) It may be fairly argued that the manipulation of the blog on the 14th April 2020 in a manner which failed to notify the reader that any update had been made (or amendment effected) was itself a dishonest act.

98) Dishonesty in the circumstances is likely given the fact that the date of the article had not similarly been amended leading the reader to conclude falsely that the article was created 'as is' in 2019. It was likely hoped by DC that the amendment would not be noticed, and therefore anyone looking at the article would be misled into thinking that it always contained the explicit quote from the *Bulletin of Atomic Scientists* which mentioned coronavirus (which DC in the Rose Garden interview has falsely represented is the position).

99) We are at a loss as to imagine what innocent explanation DC could forward for making the amendment to the article in the manner he did, in any event, given the objective test of dishonesty, it is unlikely to be seen as honest behaviour by the objective standards of ordinary decent people. The article is represented as authored by "DOMINICCUMMINGS" and at the time of making the false representation in the Rose Garden DC would have known that the original article did not contain an explicit reference to coronavirus (hence the need to amend the article on or around the 14 April 2020 in the first place). This is in our view where any case for Fraud is stronger on a constituent element of the statute than on others.

100) There are however two evidential caveats to this limb of the test engaging: -

- a) If DC had in fact written about corona viruses in 2019 in a paper or other publication which is not readily accessible through internet searches, then the statements made by him in the Rose Garden would not be untrue thus they would similarly not be dishonest.

- b) If DC simply got his facts wrong, i.e. he made a mistake in the 'heat of the moment' with respect to the Rose Garden statements intimating his blogsite, then the representation may not be deemed false (the subjective element of the test).

101) With respect to caveat b), DC confirmed that he had already had a full briefing with his employer Boris Johnson the previous day⁷⁹, additionally DC came prepared to the Rose Garden interview with printed notes which he read from directly to the convened journalists. We therefore assess that the likelihood that DC, a graduate with a first-class degree from the University of Oxford, a seasoned senior Special Advisor who had preprepared for the interview, may have made a mistake with respect to his oral representations is vanishingly small.

102) Dominic Cummings has to date not been drawn to provide evidence as to his intent with regards making the statements at the Rose Garden interview concerning his writings on corona viruses. Although evidentially this remains a lacuna with respect to clarifying the absolute position on the dishonesty or otherwise of the relevant statements, given the reliance on the objective limb of the test of dishonesty it is not anticipated that dishonesty would not be made out in the present circumstances.

(iii) Intention to make a gain or cause a loss

103) The Fraud Act 2006 (s2(2)) also requires for the purposes of establishing an offence that there be an intention to make a gain for ones-self or another, or to cause loss to another or to expose another to a risk of loss. It is immaterial whether such gain or loss

⁷⁹ [Watch again: Dominic Cummings makes rare statement as calls for his resignation grow | Coronavirus - Bing video](#)

actually results, the intention alone is sufficient, however gain or loss must be material in value⁸⁰.

104) It is far from clear what material gain or material loss would have been within the contemplation of DC on the 14th April 2020 when the dishonest manipulation of his blogsite occurred. The garnering of political advantage or the aggrandisement of one's ego are not likely to constitute 'gain' for the purpose of the statute. As a consequence, though dishonesty is made out at the time the blog was manipulated, there would be no fraud in criminal terms attributable to DC resultant solely from the manipulation of his blog.

105) However, at the point where DC's made his Rose Garden interview there was extreme pressure both from the public and indeed from a large number of conservative MP's calling for DC to resign his position or be sacked by his employer⁸¹ (Mr Boris Johnson the PM)

106) As a Special Advisor DC was at all material times subject to the Code of Conduct for Special Advisers⁸² together with elements of the Civil Service Code⁸³, both the codes had been placed on a statutory footing by the Constitutional Reform and Governance Act 2010⁸⁴ The codes place the following relevant positive duties upon Special Advisers, the contravention of which would be grounds to end employment:

CODE OF CONDUCT FOR SPECIAL ADVISERS

⁸⁰ R v Gilbert [2012] EWCA Crim 2392

⁸¹ Appendix 1

⁸² [201612 Code of Conduct for Special Advisers.pdf \(publishing.service.gov.uk\)](#)

⁸³ [The Civil Service code - GOV.UK \(www.gov.uk\)](#)

⁸⁴ [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](#)

8. Special advisers are temporary civil servants appointed in accordance with Part 1 of the Constitutional Reform and Governance Act 2010. Special advisers are bound by the standards of integrity and honesty required of all civil servants as set out in the Civil Service Code.

14. Special advisers must not take public part in political controversy, through any form of statement whether in speeches or letters to the press, or in books, social media, articles or leaflets.

The Civil Service Code

Integrity

- *always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings*
- *comply with the law and uphold the administration of justice*

Honesty

You must:

- *set out the facts and relevant issues truthfully, and correct any errors as soon as possible*
- *use resources only for the authorised public purposes for which they are provided*

You must not:

- *deceive or knowingly mislead ministers, Parliament or others*
- *be influenced by improper pressures from others or the prospect of personal gain*

107) The legal opinions expressed in the advice of Benjamin Douglas Jones QC and Nathaniel Rudolf dated 24th June 2020 deal with the legality of the conduct of DC in traveling to Durham whilst England was subject to lockdown rules. They conclude that DC

behaved contrary to the law and committed criminal offences in so doing. Durham Police similarly confirm that DC may well have broken Lockdown rules.⁸⁵

- 108) Given the positive duty to “*comply with the law and uphold the administration of justice*” imposed on special advisers (in the Civil Service Code of Conduct) it is clear that DC’s breach of the lockdown rules would be sufficient cause for his employment to be terminated should his employer (Boris Johnson) see fit. Furthermore, as outlined above, DC’s behaviour in the manipulation of his blog and representations about the same in the Rose Garden interview meet the test for dishonesty. This behaviour too falls short of the statutory requirement for Special Advisors to conduct themselves with Integrity and Honesty and would similarly suffice as grounds for termination of employment.
- 109) Given the political pressure calling for DC’s termination of employment together with grounds for such termination existent prior to DC’s Rose Garden interview, it is reasonable to conclude that DC called the Rose Garden Press conference on the 25th May 2020 at least in part to neutralise the threat to his employment status as a special advisor.
- 110) Under section 5 of the Fraud Act 2006, “gain” includes a gain by keeping what one has. The intention to make a gain here would be formulated as DC’s intention, by making the false representation, to help to keep his job (at least as his ulterior motive). In the recent case of *Bush* [2019] EWCA Crim 29, charges of fraud by abuse of position and false accounting under the Fraud Act 2006 were brought with the alleged intention of the defendants to gain for themselves by keeping their jobs [see para 134]. The retention of a job would therefore appear to be a valid prima facie basis of intention; that being said, much of the relevant case law is concerned with gaining employment rather than keeping it. In the matter of *Bush* (the Tesco directors’ case) the alleged false statements were far more egregious and directly related to job performance and retention than the false statements of DC in his Rose Garden interview.

⁸⁵ <https://www.independent.co.uk/news/uk/politics/dominic-cummings-lockdown-durham-police-b1798462.html>

111) Furthermore, there would likely be severe evidential difficulties with proving that job retention was DC's specific intention when making the representations in the Rose Garden. It is noted that in the matter of *Bush* the judge in that case found the evidence weak in this regard. One cannot put aside evidential lack when considering a prima facie case. Absent the direct evidence, one would have to be able to successfully argue that the existing evidence is sufficient for a jury properly directed to infer that the intention in making a false statement was motivated by the desire to retain employment. This is a hurdle that we are far from sure is crossed in this case.

112) Another difficulty is highlighted by the older case of *Clarke (Victor Edward)* [1996] Crim. L.R. 824. This matter concerned obtaining pecuniary advantage by deception, prior to the inception of the Fraud Act 2006. Here it was alleged that a private investigator falsely told a group of potential clients that he was a former fraud squad officer and a court bailiff as a result of which the clients engaged him. The private investigator maintained that he had not been dishonest because he believed he was able to do the work and intended to do so. The Court of Appeal held that his belief (that he could do the job) together with his intention to perform the role may amount to evidence of honesty and should have gone before the jury. It is notable that this decision was prior to the reformulation of the objective test of dishonesty as set out in *Ivey v Genting Casinos*, and so arguably today there would be less focus on the defendant's subjective intention (although it still forms part of the test). DC may argue that in making the false representation it was not with the specific intention of keeping his job, and in any case he felt that he could do his job as he had been doing to date.

113) Although s5 Fraud Act 2006 affords the notion that for the purposes of s 2 of the Act a 'gain' can amount to an intention to maintain in one's possession something that one already has (in DC's Case his job). We are of the strong view that this limb of the test is unlikely to be made out in the circumstances of the matter for the reasons given below.

114) As noted above Boris Johnson confirmed on the 24th May 2020 in a televised statement that he had discussed the circumstances of DC's travel to the north east of England during lockdown and concluded that:-

"In every respect, he [Dominic Cummings] has acted responsibly, legally and with integrity,"⁸⁶.

115) Flowing from this statement it follows that DC would not have been in fear of his job being in jeopardy on the 25th May 2020 when he gave his Rose Garden address. Given that DC's employment position was likely to his mind secure, it must follow that the test in section 2 of the Fraud Act , the requirement to prove an intention for gain (even when read with section 5 of the fraud act in mind) is unlikely to be made out.

116) There remains a possibility that DC did not communicate to his employer (BJ) the fact of his April 2020 blog site manipulations. Such omission would be a breach of the Special advisor code of conduct and the Civil Service Code, consequently any proclamations by BJ on the 24th May 2020 made in reliance of that omission could be undermined. However, no evidence exists at hand of what disclosures were made to BJ by DC prior to the Rose Garden interview. This lacuna in the evidence at this stage poses in our view an unsurmountable obstacle to establishing the essential element of intent for 'gain' required by s2 of the Fraud Act 2006 to establish an offence.

Conclusion

117) In conclusion, despite the apparent misrepresentations made by DC, a successful prosecution for fraud in the circumstances is unlikely.

MISCONDUCT IN PUBLIC OFFICE

The law

118) Misconduct in public office is an ancient offence which can be traced back to the 13th Century. The development of the offence in its present form has its inception in 1783 in

⁸⁶ [Boris Johnson says Dominic Cummings 'acted legally, responsibly and with integrity' in lockdown row \(politicshome.com\)](https://www.politicshome.com/news/boris-johnson-says-dominic-cummings-acted-legally-responsibly-and-with-integrity-in-lockdown-row)

the judgment of Lord Chief Justice Mansfield in *R v Bembridge* and remains a common law offence in English law.

119) We have been instructed to ascertain whether the statements made by DC in the Rose Garden interview concerning his writings on the subject of corona viruses may engage the constituent elements of this offence.

120) Aptly the law in this area has been encapsulated in the matter of *R (on the application of Boris Alexander De Pfeffel Johnson) v Westminster Magistrates' Court*⁸⁷

121) The case centred around a private prosecution brought by Mr Joseph Ball alleging that Boris Johnson in his various positions as a Member of Parliament and Mayor of London, abused the public's trust during the 2016 Brexit referendum. It was alleged that Boris Johnson had engaged and disseminated lies about the United Kingdom's spending on European Union membership. A District Judge issued a summons in respect of Mr Johnson for the offence of misconduct in public office. The decision to issue the summons was judicially reviewed, the divisional court allowed the claim for judicial review and quashed the summons. In that hearing the Divisional Court outlined the elements of the offence of misconduct in public office, stating:

Legal Framework:-

7. When determining an application for a summons a magistrate must ascertain whether the allegation is of an offence known to law, and if so whether the essential ingredients of the offence are prima facie present (R (DPP) v Sunderland MC [2014] EWHC 613 (Admin) ("Sunderland")).

8. In Attorney General's Reference (No 3 of 2003) [2005] QB 73 ("AG Ref 2003") the Court of Appeal identified the four elements of the common law offence of misconduct in public office as:

i) a public officer acting as such

⁸⁷ [2019] 1 WLR 6238.

- ii) *wilfully neglects to perform his duty and/or wilfully misconducts himself*
- iii) *to such a degree as to amount to an abuse of the public's trust in the office holder*
- iv) *iv) without reasonable excuse or justification.*

9. At paragraph 43 the court referred to the case of *Shum Kwok Sher v HKSAR (2002) 5 HKCFAR 381* from the Court of Final Appeal in Hong Kong, which held that a public official culpably misconducts himself if he wilfully and intentionally neglects or fails to perform a duty to which he is subject by virtue of his office or employment without reasonable excuse or justification. He also culpably misconducts himself if with an improper motive he wilfully and intentionally exercises a power or discretion which he has by virtue of his office without reasonable excuse or justification'

122) The Divisional Court went on to consider 'wilfully neglects to perform his duty and/or wilfully misconducts himself':

31. 'Whilst there is a great variety of circumstances in which the offence of misconduct in a public office may be charged, in *AG Ref 2003 Pill LJ* said (at para 55):

"There must be a breach of duty by the officer. It may consist of an act of commission or one of omission. ..."

32. Further support for this view is derived from *R v Mitchell [2014] 2 Cr App R 2* where Sir Brian Leveson P said that defining a public office involved three questions:

- i) *What is the position held?*
- ii) *What duties are undertaken by the officer?*
- iii) *Does their discharge fulfil a responsibility of government such that the public has a significant interest in the discharge additional to or beyond that of a person who might be directly affected by a serious failure in its performance?*

33. *Misconduct in public office bites on breaches of duties, which constitute the offence itself. All the cases to which we have referred and many more we were shown share the common feature of corrupt abuse of public power for personal gain, or gross neglect in failing to comply with the core duties of the office. Such*

*conduct is capable of satisfying the connected tests of breach of duty and the gravity necessary for the offence to be established. **The offence will be made out only if the manner in which the specific powers or duties of the office are discharged brings the misconduct within its ambit. Consequently at the time of the alleged misconduct the individual must be acting as, not simply whilst, a public official.***

34. This common law offence consistently considered neglect of duties or abuse of state power. No authority was shown to us suggesting that the offence can be or has been equated to bringing an office into disrepute or misusing a platform outside the scope of the office’.

Consideration of the evidence

‘Public officer acting as such’

123) Applying the tests in turn to the present matter, the first consideration is assessing whether DC at the time of giving his press conference was a public officer acting in such capacity.

124) The pertinent facts are that DC was appointed as a special advisor to the PM in June 2019, he remained in that role during the 26th May 2020 Rose Garden interview and up until November 2020. It is clear that DC was not acting in his capacity as a special advisor when he took ill and decided to make his way to Durham during the lockdown period, as by definition a person who has taken leave of his duties due to illness is not thus acting at that time in his work capacity.

125) Similarly it cannot be said DC was acting in his capacity as Special Advisor when he was writing and updating his personal blog site in the first quarter of 2020.

126) DC did however return to work in his capacity as Special Advisor on the 14th April 2020; he called a press conference on Monday 25th May during office hours having designated the location of the press conference to be 10 Downing Street, the place of his work. At the very beginning of the press conference DC stated –

“.... good afternoon, thank you for coming – yesterday I gave a full account to the prime minister of my actions between the 27th March and the 14th April for what I thought and did .He has asked me to repeat that account directly to you”

127) In the above statement DC confirms that he was executing the orders of his employer (Boris Johnson) in giving the press conference at all, and in giving the press conference from 10 Downing Street DC was cloaking his words with the force of his office.

128) In light of the above, it is our view that DC would be found to have been acting as a public officer and acting in that capacity at the time he was giving his press conference from 10 Downing Street.

‘Wilful neglect / Wilful misconduct’

129) The first test being made out, the second requires establishment of whether DC wilfully neglected to perform his duty and/or wilfully misconduct himself when making the representations he made concerning his writings on corona viruses at the Rose Garden interview.

130) In consideration of this limb of the test it is necessary to identify firstly which duties applied to DC at the relevant time.

131) As a special advisor DC was subject to statutory duties imposed by the Special Advisors Code of Conduct together with selected duties imposed by the Civil Service Code. These duties impose a burden on all special advisors to adhere to the same in the exercise and operation of their duties.

132) In particular the Code of Conduct for Special Advisers states:-

“14. Special advisers must not take public part in political controversy, through any form of statement whether in speeches or letters to the press, or in books, social media, articles or leaflets”.⁸⁸

133) DC as special advisor was subject to the following additional duties imposed by The Civil Service Code, under the heading of ‘Standards of behaviour’⁸⁹, in particular: -

Integrity

You must “always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings”

Honesty

You must “set out the facts and relevant issues truthfully, and correct any errors as soon as possible”

You must not: “deceive or knowingly mislead ministers, Parliament or others”

134) In assessing whether DC breached these obligations by virtue of his misrepresentations regarding his blog writings, it is noted that the writings themselves⁹⁰ were not contentious (for the purpose of establishing the offence) at the time of their original authorship in 2019. As we have seen in the background section above, the political sensitivity around Corona virus erupted in early 2020, consequently contention arises in April 2020 when DC manipulated his blog during the pandemic to make it appear that he was writing about corona viruses explicitly prior to the advent of the pandemic. The issue of focus for the purposes of this advice however centres around DC making implied reference to his blog writings within the currency of the Rose Garden interview itself. The interview (whilst clearly being a speech for the purposes of the Code of Conduct for Special Advisers) was ordered by DC’s employer. As a result, the interview itself although

⁸⁸ [201612 Code of Conduct for Special Advisers.pdf \(publishing.service.gov.uk\)](#)

⁸⁹ <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

⁹⁰ [Dominic Cummings edited an old blog to add a reference to coronaviruses \(newstatesman.com\)](#)

being politically controversial, cannot in our view be considered a breach of the code of conduct for Special Advisers in and of itself.

135) Turing to the remaining duties, with respect to the twin duties of integrity and honesty imposed by The Civil Service Code, we have concluded above in our section concerning the Fraud Act 2006 that DC's statements relating to his writings on Corona viruses can properly be viewed as misleading and motivated by a desire to deceive on his part.

136) Given the above assessment, it is manifest that DCs behaviour breached his statutory duties of maintaining honesty and integrity. Of particular note is the fact that despite the manipulation of DC's blogsite making headline news in the national press, DC has to date failed to clarify the position. This failure appears to be a direct breach of a civil servants duty to: -

*"set out the facts and relevant issues truthfully, and correct any errors as soon as possible"*⁹¹.

137) We conclude that DCs behaviour in misleading the public regarding his writings on corona viruses squarely falls within the purview of the second test outlined in *Attorney General's Reference (No 3 of 2003)*⁹², i.e., that DC's behaviour was such that he wilfully neglected to perform his duty and/or wilfully misconducted himself.

'an abuse of the public's trust in the office holder'

138) The third test required to establish the common law offence concerns itself with the seriousness of the neglect/misconduct. Authority for the elements which establish the threshold for the third test can be found in the matter of *Chapman* [2015]⁹³, which draws on a formulation contained in the matter of *Shum Kwok Sher* [2002]⁹⁴. Here the formulation in respect of the third test was expressed at paragraphs 56-8:

⁹¹ <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

⁹² [2005] QB 73

⁹³ 2 Cr App R 10

⁹⁴ 5 HKFAR 381

*“56. ... There must **be a serious departure from proper standards before the criminal offence is committed**; and a departure not merely negligent **but amounting to an affront to the standing of the public office held**. The threshold is a high one requiring conduct so far below acceptable standards as to amount to **an abuse of the public’s trust in the office holder**. A mistake, even a serious one, will not suffice. The motive with which a public officer acts may be relevant to the decision whether the public’s trust is abused by the conduct*

*57 ... the element of culpability must be of such a degree that the **misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment***

*58 ... The conduct cannot be considered in a vacuum: the consequences likely to flow from it, viewed subjectively will often influence the decision as to whether the conduct amounted to an abuse of the public’s trust in the officer ... There will be some conduct which possess the criminal quality even if serious consequences are unlikely, **but it is always necessary to assess the conduct in the circumstances in which it occurs.**”*

Applying the elements of the Shum Kwok Sher formulation to the circumstance of DC.

139) The particular behaviour being scrutinised is the fact that DC caused his personal blog post to be manipulated in April 2020 such that it misleads the reader into believing that he had written about Corona viruses in 2019 where as in fact he had not. DC then went on to repeat this misrepresentation publicly twice in his interview on the 25th May 2020

140) The duties imposed on a special advisor by the Special Advisors Code of Conduct together with the Civil Service Code of Conduct exist on a statutory basis through the Constitutional Reform and Governance Act 2010.

141) In any scenario where a senior civil servant has contrived a dishonest misrepresentation and then repeated and transmitted that misrepresentation to the public from his position in office clearly fall foul of the standards set by statute. The test for whether the misconduct passes the threshold of criminality require that the misconduct was not merely negligent but so egregious as to amount to an abuse of the public trust in the office held⁹⁵. In order to ascertain whether this is the case, the full circumstances and context of the misconduct has to be considered⁹⁶.

The full context:

142) In the current circumstance, It is relevant to note that DC occupied a senior and public position within the government. DC received widespread criticism for insinuating himself with the Scientific Advisory Group for Emergencies (SAGE) on numerous occasions concerning the pandemic⁹⁷. As such DC was publicly and intimately associated with the government's pandemic response.

143) At the material time the entirety of the United Kingdom was subject to emergency lockdown rules in order to try and reduce the deadly spread of Covid 19⁹⁸. The consequence of the rules meant that schools were closed, families were estranged, loved ones were not permitted to visit one another in hospital, even on their deathbed. DC was an instrumental part of the team in government who helped formulate those rules. Despite these measures some sections of society were ignoring the rules and thus placing society at greater risk of infection and death⁹⁹.

⁹⁵ *Chapman* [2015] 2 Cr App R 10

⁹⁶ *Shum Kwok Sher* [2002] 5 HKFAR

⁹⁷ <https://www.telegraph.co.uk/politics/2020/04/29/dominic-cummings-tried-influence-lockdown-advice-sage-members/>

⁹⁸ <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

⁹⁹ <https://www.theguardian.com/world/2020/may/21/fewer-young-adults-sticking-uk-lockdown-rules-study-coronavirus>

144) Two other senior civil servants, Dr Catherine Calderwood¹⁰⁰ & Professor Neil Ferguson¹⁰¹, who were similarly in crucial roles concerning the corona virus pandemic response, had resigned from their positions upon discovery by the public of their own breaches of lockdown rules. Concerning both resignations, both protagonists expressed regret around their actions for potentially undermining the governments public health messaging concerning the need for social distancing. A need that was crucial for all members of society to follow in order to save lives.

145) Rather than adhere to lockdown rules himself, DC drove himself and his family nearly 300 miles from London to Durham for a number of days. Whilst in Durham, and coincidentally on his wifes birthday, DC took his family to Barnard Castle where he was spotted by a member of the public. Shortly after this trip DC returned to London to reengage his duties as a Special Advisor.

146) Following his return to London, DC caused his personal blog post to be manipulated such that it misleads any reader into believing that DC had written about corona viruses in 2019 whereas in fact he had not.

147) The fact of Dc's trip to Durham and Barnard castle appeared in the mainstream media leading to calls for DC's resignation or forced removal by numerous MP's and the public at large. Rather than resign DC insisted that he had not broken any of the rules concerning lockdown and attempted to justify his actions at a press conference from his place of work. In the course of the press conference in response to questions designed to eliciting the reason for why DC had driven his family to Barnard Castle he replied : -

"My wife was very worried, particularly given my eyesight seemed to have been affected by the disease. She didn't want to risk a nearly 300-mile drive with our child, given how ill I had been. We agreed that we should go for a short drive to see if I could drive safely. We drove for roughly half an hour and ended up on the outskirts of Barnard Castle town."

¹⁰⁰ <https://www.gov.scot/news/statement-from-the-chief-medical-officer/>

¹⁰¹ <https://www.bbc.co.uk/news/uk-politics-52553229>

148) The statement suggested that DC had placed his family into a vehicle and driven on the public roads knowing that his eyesight had been compromised, and he had done this in order to test his eyesight. In the same interview DC made his false claims where he purported to have written explicitly about corona viruses in 2019.

‘Motive’

149) The test outlined in Shum Kwok Sher [2002] allows for the motive of the protagonist to be considered a factor in contributing to whether the culpability for the misconduct is egregious enough to pass the bar of criminality.

150) Scrutinising The statements made by DC with respect to his Barnard Castle trip provides some insight into DC’s motives behind his statements in the Rose Garden interview. Those statements have been met with widespread incredulity. The credibility of DC’s excuse for driving to Barnard Castle during lockdown (for the purpose of testing his eyesight) has been publicly questioned on the basis that there is no credible medical evidence linking Corona virus with eyesight difficulties¹⁰². Additionally, incredulity has been levied at this explanation on the basis that it is a criminal offence for a person to drive a vehicle on a public road while their eyesight is defective¹⁰³, a matter known to all holders of a UK driving licence.

151) The only quarters that have attempted to give credence to DC’s statements regarding his eyesight being affected by Covid and the incredible notion that it is in any way appropriate to test ones compromised eyesight by driving a vehicle on the public highways are from Boris Johnson¹⁰⁴ and Michael Gove¹⁰⁵ respectively.

¹⁰² <https://www.theguardian.com/politics/2020/may/26/can-coronavirus-affect-eyesight-evidence-is-lacking-say-experts>

¹⁰³ Section 96 of the Road Traffic Act 1988

¹⁰⁴ <https://www.mirror.co.uk/news/politics/boris-johnson-says-bad-eyesight-22084811>

¹⁰⁵ <https://www.independent.co.uk/news/uk/politics/coronavirus-michael-gove-dominic-cummings-barnard-castle-boris-johnson-a9532276.html>

152) It is of note that neither Boris Johnson or Michael Gove are medically qualified, nor do they possess any professional qualifications relating to Highway Code compliance, consequently zero weight may be placed upon their supporting statements.

153) The lack of credibility of DC's Barnard Castle statements may well inform a jury of the motivations DC had in making the statements at the Rose Garden press conference. Such motivations may well be imputed as the motivation possessing DC to repeat the false statements regarding his blogpost on Corona viruses as they were made in the same context. DC's incredible statements regarding Barnard Castle may well, in a standalone sense, constitute the basis of an offence for Misconduct in Public Office in and of themselves.

154) In light of the above, we assess that DC was motivated by a desire to deceive when making his false statements at the Rose Garden interview. As such it is likely that DC's misconduct falls within the definition of *'conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder'*.

'Consequences flowing from misconduct'

155) The test in Shum Kwok Sher allows for the likely consequences which flow from a given misconduct to be factored into the decision as to whether the conduct amounted to an abuse of the public's trust in the officer concerned. This is a subjective element to the test; thus, the question becomes: to DC's mind what were the likely consequences to flow from his misconduct.

156) This part of the test is rather straightforward in the given circumstances, DC had the fresh examples of Dr Catherine Calderwood & Professor Neil Ferguson to hand. Both resigned their posts having been caught breaking lockdown rules. Both cited the reason for their resignation being the likely negative impact their behaviour had upon the public's adherence toward the governments message for the public to stay at home.

Consequently, it is reasonable to conclude that someone as astute as DC would have known that his misconduct being similar to those mentioned before would likewise have the same negative impact contemplated by them. To add weight to this position, the 'likely consequences' became manifest in reality with protestors (themselves in breach of lockdown rules) demonstrating outside DC's London home after his Rose Garden interview¹⁰⁶. The public's condemnation of DC's misconduct was voiced so forcefully that Conservative Minister Douglas Ross, the MP for Moray, resigned over DC's failure to be removed from office.¹⁰⁷

157) It is our view that the likely consequences of DC's misconduct would have been abundantly clear to DC at the time he was making his false statements in the Rose Garden interview. Consequently, we assess that DC's culpability for the misconduct would be sufficient to be considered '*conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder*'

158) The issue of DC's culpability for misconduct is squarely a matter for a jury, the steps a jury would take to decide the issue is concisely encapsulated in the matter of *R v Dytham* [1979]¹⁰⁸ where it was stated:-

"This [offence] involves an element of culpability which must be of such a degree that the misconduct is calculated to injure the public interest so as to call for condemnation and punishment. Whether such a situation is revealed by the evidence is a matter that a jury has to decide. It puts no heavier burden upon them than when in more familiar contexts they are called upon to decide whether driving is dangerous or a publication is obscene"

159) In our view, when 'motive' and 'consequence' are considered together as informative of DC's culpability for misconduct, the final limb of the test in *Shim Kwok Sher* is made out

¹⁰⁶ <https://news.sky.com/story/coronavirus-die-in-outside-dominic-cummings-house-over-covid-19-response-12000769>

¹⁰⁷ [Tory revolt grows as minister resigns over Dominic Cummings' lockdown trip | Conservatives | The Guardian](#)

¹⁰⁸ QB 722

I.e. That DC's behaviour was of such '*a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment*'.

160) We further assess that the various elements constituting the offence of Misconduct in Public Office as espoused in *Attorney General's Reference (No 3 of 2003)*¹⁰⁹ have been met. Consequently, we assess there may be a criminal case to answer by DC concerning the false statements he made in his Rose Garden address on the 25th May 2020.

Right to bring a private prosecution

161) The right of an individual to bring a private prosecution is codified in section 6(1) of Prosecution of Offences Act (POA) 1985 which states :-

6 Prosecutions instituted and conducted otherwise than by the (Crown Prosecution) Service.

*(1)Subject to subsection (2) below, **nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.***

162) However where a private prosecution has been initiated the Director of Public Prosecutions (DPP) pursuant to s.6(2) of the Prosecution of Offences Act 1985 may take over such proceedings :-

(2)Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

163) Where the DPP does take over a private prosecution he may allow the for the prosecution to be continued or discontinued as the he sees fit. If the DPP decided to discontinue the prosecution, the possibility remains that that decision may be challenged

¹⁰⁹ [2005] QB 73

by way of judicial review. Any such judicial review proceedings would involve scrutiny of the basis for the DPPs decision to discontinue the prosecution.

Conclusion

164) It is settled law that where a behaviour can be framed as a statutory offence as well as a common law one the statutory offence takes precedence. Having analysed both the legal framework and the available facts concerning DC we have concluded that no offence has been committed capable of engaging any of the offences contemplated in the Fraud Act 2006. We assess however that there may exist a criminal case to answer by DC for the common law offence of Misconduct in Public Office.

165) Despite the above, caution needs to be applied to the question of whether a given matter ought to be proceeded with concerning the initiation of criminal proceedings.

166) In the matter of *R v Rimmington*¹¹⁰ Lord Bingham of Cornhill outlined the appropriate ambit of common law offences stating :

‘There are two guiding principles: no one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it; And no one should be punished for any act which was not clearly and ascertainably punishable when the act was done. If the ambit of a common law offence is to be enlarged, it ‘must be done step by step on a case by case basis and not with one large leap.’

167) With respect to DC, what is being proposed is criminal proceedings being issued against a civil servant for repeating untruths in a publicly broadcast press conference. To our knowledge such a situation is without precedent. Consequently, the question arises as to whether the scope of the common law offence of misconduct in public office ought to be expanded to encompass this sort of misconduct.

168) Concerning the initiation of a private prosecution vis a vis DC for the offence of Misconduct in Public Office, there is no bar in law to this course of action being taken.

¹¹⁰ [2006] 1 AC 459

169) That being said, two issues give pause. Firstly, the ability of the DPP to take over a private prosecution at his sole discretion. Secondly, the question of whether the common law offence should be expanded to accommodate lies in a press conference remaining a live issue. In the circumstances, our advised course of action is to have this legal analysis together with the supporting evidentiary documents submitted to the MET police for their consideration and action.

170) Should the MET police or CPS choose not to take the matter forward, the option of initiating a private prosecution may be revisited at that time.

Mr Mohammed Akunjee

Waterfords Solicitors

22/03/2021

Appendix 1

Calls for resignation before the interview:

23rd- 24th May 2020

Ian Blackford

MP Verification

23rd May

It is now clear that Boris Johnson has serious questions to answer over the Dominic Cummings cover up. When did he find out? Did he sanction rule-breaking? Why wasn't Cummings sacked? Why was the public kept in the dark until newspapers broke the story 8 weeks later? [#coronavirus](#)

[8:47 AM · May 23, 2020](#)

Sir Edward Davey

MP Verification

23rd May

'If Dominic Cummins has broken the lockdown guidelines he will have to resign, it is as simple as that'

Steve Baker

MP Verification

24th May

Dominic Cummings must go before he does anymore harm

Time is up. It is time for Dom to resign so Boris can govern within the conventions and norms which will see us through.

Roger Gale

MP Verification

24th May

Simon Hoare
MP Verification
24th May

@Simon4NDorset

With the damage Mr Cummings is doing to the Government's reputation he must consider his position. Lockdown has had its challenges for everyone. It's his cavalier "I don't care; I'm cleverer than you" tone that infuriates people. He is now wounding the PM/Govt & I don't like that

9:07 AM · May 24, 2020

Damian Collins
MP Verification
24th May

@DamianCollins

Dominic Cummings has a track record of believing that the rules don't apply to him and treating the scrutiny that should come to anyone in a position of authority with contempt. The government would be better without him. **9:29 AM · May 24, 2020**

Peter Bone
MP Verification
24th May

'When advisers become the story, they go'. Tory MP Peter Bone Tells ITV News 'the vast, vast majority of Conservative MPs think Dominic Cummings should go'
(ITV News)

Caroline Nokes
MP Verification
24th May

@carolinenokes

I made my views clear to my whip yesterday. There cannot be one rule for most of us and wriggle room for others. My inbox is rammed with very angry constituents and I do not blame them. They have made difficult sacrifices over the course of the last 9 weeks.

10:25 AM · May 24, 2020 from **West Wellow, England**

Craig Whittaker

MP Verification

24th May

@CWhittaker MP

I totally agree that Dominic Cummings position is untenable. I'm sure he took the decision in the best interests of his family but like every decision we take we also have to take responsibility for those decisions. You cannot advise the nation one thing then do the opposite. [10:30 AM · May 24, 2020](#)

Julian Sturdy

MP Verification

24th May

Paul Maynard

MP Verification

24th May

I can only share the collective dismay and I understand the widespread anger. So many people in this constituency have gone out of their way to stick to both the letter and the spirit of the guidelines and laws, despite it coming at great personal emotional cost. [1/2](#)

It is a classic case of 'do as I say, not as I do' - and it is not as if he was unfamiliar with guidance he himself helped draw up. It seems to me to be utterly indefensible and his position wholly untenable. [2/2](#)

[7:17 PM · May 24, 2020](#)

Jason McCartney

MP Verification

24th May

Finally, I fully acknowledge that the perceived hypocrisy of the rule makers potentially threatens the success of any future measures we may need to introduce if there is a second wave of Coronavirus here in the UK. We must have confidence that we

are doing the right things for the right reasons and that we are all truly in it together. For that reason I believe Mr Cummings' position is now untenable.
(Facebook)

Tim Loughton
MP Verification
24th May

It is with regret therefore that I have come to the conclusion that the position of Dominic Cummings is untenable as the chief adviser to the Government and he must resign or be removed.
(Facebook)

Robert Syms
MP Verification
24th May

The Govt have to explain Test Track and Trace and the next phase of lifting lockdown next week. Whatever the merits of a Govt Advisor they should never be the story or it detracts from central message which is to get us out of this crisis. The advisor should go.
[12:34 PM · May 24, 2020](#)

James Gray
MP Verification
24th May

'Wiltshire MP James Gray is number 11. Tells me Cummings should go. And in an email to a constituent he wrote of the PM's chief adviser: 'Having him continuing at the heart of Government undermines our credibility and the strength of our message.'

Martin Vickers
MP Verification
24th May

David Warburton

MP Verification

24th May

As much as I despise any baying pitchfork-led trials by social media, I'm unconvinced by the PM's defence of [#Cummins](#). We've all been tasked with tempering our parental, and other, instincts by strictly adhering to Govt guidance.

[6:18 PM · May 24, 2020](#)

Robert Halfon

MP Verification

24th May

I would first like to make it clear to residents that I regret writing the tweet yesterday (*Ill couple drive 260+ miles to ensure that their small child can be looked after properly. In some quarters this is regarded as crime of the century. Is this really the kind of country we are?*)

in the way I did about the Number 10 political adviser and his movements. I am really sorry for it. I do not support, or condone anyone who has broken the law or regulations. Anyone who has done so should face the consequences.

(Facebook)

After Rose Gardens: 25th-26th

Peter Aldous

MP Verification

25th May

'If Dominic Cummins has broken the lockdown guidelines he will have to resign, it is as simple as that'

My initial view was to be sympathetic to Dominic Cummings due to his expressed desire to protect his young son. I have now revised this opinion. (1/5)

I have received many e-mails from constituents highlighting the sacrifices that families have made during the Pandemic and expressing upset and anger that there appears to be one rule for

those in positions of authority and another for everyone else.
(2/5)

Moreover, questions remain unanswered as to whether Mr Cummings completely self-isolated whilst he was in County Durham. (3/5)

At a time when the Country must move on to the next stage of defeating Covid-19, of getting back to work whilst ensuring that there is not a second peak, there must be no distraction from this challenge. (4/5)

The Government should recognise what families have gone through and what people are thinking and saying. It is thus important that Dominic Cummings should now stand down. (5/5)

[11:01 AM · May 25, 2020](#)

[Dehenna Davison](#)

[MP Verification](#)

25th May

[John Stevenson](#)

[MP Verification](#)

25th May

Carlisle and the country have sacrificed a lot over the last few weeks. People in positions of power have added responsibility- Mr Cummings holds such a position. Therefore in my view in the interests of the country Mr Cummings should resign.

[1:48 PM · May 25, 2020](#)

[Robert Largan](#)

[MP Verification](#)

25th May

If all the reports about Dominic Cummings are true, then I believe his position is untenable and he should resign.

[Bob Stewart](#)

[MP Verification](#)

25th May

If all the reports about Dominic Cummings are true, then I believe his position is untenable and he should resign.

The truth is that, whether Mr Cummings broke or didn't do the right thing, he certainly destroyed the spirit of the rules by what he did. It will make it very difficult for us, the rest of the population, to accept the largely voluntary restraints we have lived under for 9 weeks. I apologise for that because those rules remain in place and we should all still abide by them.

I am afraid I believe his position is thus untenable.

Michael Fabricant

MP Verification

25th May

However, if there were undeniable evidence that he did not maintain the quarantine and so endangered others, he should, of course, be immediately sacked and face possible prosecution.

Duncan Baker

MP Verification

25th May

Harriett Baldwin

MP Verification

25th May

Robert Goodwill

MP Verification

26th May

Andrew Jones

MP Verification

26th May

'Mr Cummings has 'broken the guidelines which we were and are all expected to follow. For that reason I think that he should resign and if he does not do so then he should be dismissed'

We cannot throw away valuable public & political good will any longer. It's humiliating & degrading to their office to see ministers put out agreed lines in defence of an advisor. This is a time of national emergency and our focus must be unrelenting. We owe it to the nation. [10:35 AM · May 26, 2020](#)

[Douglas Ross](#)

[MP Verification](#)

26th May

Linked to the tweet above is Douglas Ross's resignation from his role of a government Minister. Ross said he could not tell the public they were 'wrong and one senior adviser to the Government was right'.

[Simon Jupp](#)

[MP Verification](#)

26th May

Like you, I have felt a mixture of anger, disappointment and frustration in recent days.

We are all making significant sacrifices and coping with situations we couldn't imagine just a few months ago. Many of us, including myself, have lost people in our lives and haven't been able to see family and friends. It's been incredibly tough for everyone.

Hundreds of people have contacted me regarding Dominic Cummings. I have read each and every email sent to me on this topic. I wanted to know the facts before responding to you. I have raised questions which I felt needed answering and made the strength of feeling in East Devon clear to the party leadership.

I won't rehearse the timeline of events with you. I'm sure you either watched the press conference or have since read about it via a trusted and respected news source.

Although I believe his actions were motivated by a father's desire to do what he felt was necessary to protect his family in exceptional circumstances, if placed in the same situation I

wouldn't have made the same decisions and would have since considered my position.

I will continue to share my views and those of my constituents with the party leadership. This has been a deeply unhelpful distraction we could do without as a nation dealing with a pandemic.

As your MP, I will continue to focus my efforts on the hundreds of emails I continue to receive daily from constituents requiring my help and support.

I would be doing a disservice to you and those who need support during this difficult time if I acted in any other way.

Mark Pawsey
MP Verification

26th May

I believe that it is wrong that Mr Cummings remains in an important post in Government. I had hoped that he would tender his resignation of his own accord. As he has failed to do so, I now believe it is right for the Prime Minister to ask for his resignation. This is a position that I have communicated to my colleagues within the Conservative Party and the Government.

Mark Harper
MP Verification

26th May

Philip Davies
MP Verification

26th May

Davies has asked Cummings to 'do the honourable thing and resign from his position'

"However, rightly or wrongly, it is clear that as far as the overwhelming majority of the public are concerned they feel that there is now one rule for them and one rule for those in authority. That cannot be allowed to stand."

Stephen Hammond

MP Verification

26th May

I have always tried to do the best thing for Wimbledon and whilst I think it would be served by Mr Cummings leaving his role, I accept that is the Prime Minister's decision who he employs as a Special Adviser.

Jeremy Wright

MP Verification

26th May

This is more important than the position of any individual in Downing Street and therefore, fairly or unfairly, I have concluded that it would be better for Mr Cummings to leave his position at Downing Street. I have communicated my view and the reasons for it to the Prime Minister.

Alec Shelbrooke

MP Verification

26th May

Elliot Colburn

MP Verification

24th/26th May

It is for these reasons, that I have [written to the Prime Minister again today](#) to express my view that Mr Cummings should resign.

First Letter: 24th May

That said, at time of writing I have received over a hundred emails from constituents expressing their utter dismay at Mr Cummings' actions. Many have been in touch to discuss their own personal experiences of COVID-19 and lockdown, and exemplifying how they had worked hard to follow the rules set out by the Government and medical and scientific advisers. It is exceptionally difficult to defend Mr Cummings to my constituents in these circumstances.

Second Letter: 26th May

Further to my letter to you of the 24 May, I am afraid that I must now write to urge you to ask for Dominic Cummings' resignation, or to remove him from Government directly.

Andrew Percy

MP Verification

26th May

Andrew Percy wrote to constituents to say Dominic Cummings should go

Stephen Metcalfe

MP Verification

26th May

Jackie Doyle-Price

MP Verification

26th May

'Frankly this has been a very embarrassing episode for the Government. To bring this sorry chapter to an end I am afraid Mr Cummings has to go.' (Facebook)

Bob(Robert) Neill

MP Verification

26th May

We can all make genuine mistakes. But unfortunately, that recognition that his actions had in fact sent the wrong message and undermined the collective effort that we have all been making to prevent the spread of infection, and that apology, have not been forthcoming.

However, for the reasons I have set out, and to avoid future distractions from our common message and purpose, I believe that Mr Cummings should now step down from his post

Mark Garnier

MP Verification

26th May

“we’ve got ourselves into such a mess over this, the only way out of it is for him to be a gentleman about it and move on”

Fiona Bruce

MP Verification

26th May

Anthony Mangnall

MP Verification

26th May

So, to see that others have chosen to follow the rules differently is incredibly difficult. However, I cannot pretend to know the course of action a father might take in regards to the safeguarding of his child.

Mr Cummings has given his explanation to the Prime Minister and the nation. I share many of the concerns that have been raised. I would not have taken that course of action.

Jeremy Hunt

MP Verification

26th May

Laurence Robertson

MP Verification

26th May

I am, therefore, urging the Prime Minister, and all those closely connected to him, to recognise the strength of feeling which exists on this issue and to dismiss Mr Cummings without further delay.

Appendix 2

Digital Forensics Report

Form MG 11

Witness Statement

(CJ Act 1967, s.9 MC Act 1980, ss.5A(3)(a) and 5B; MC Rules 1981, r.70)

Statement of Tahir Butt

Age if under 18 'Over 18'

(if over 18 insert 'over 18')

Occupation Digital Forensics Examiner

This statement (consisting of: 5 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Dated: 4th July 2020

Signature: Tahir Butt – Digital Forensics Examiner

I am currently an Independent Digital Forensics Consultant, having worked for the Metropolitan Police service for twenty seven years, with the last 14 years spent as a Senior Computer Forensic Examiner in the Child Protection High-Tech Crime Unit.

I have successfully completed a number of specialist training courses in Digital Forensic, including the National Specialist Law Enforcement Centre's (NSLEC) "Core Skills in Data Recovery and Analysis" course, the Royal Military College of Science's (RMCS - Cranfield University) "Forensic Computing Foundation" course, and Foundation in Mobile Phone Forensics (Control-F).

I've also successfully completed a number of specialist certification programs in Digital Forensics including Encase's Certified Examiner Certification Program (EnCE), 7Safe's Certified Cyber Investigator certification (CCI) and Certified Malware Investigator (CMI) certification.

All examinations I conduct are carried out on a computer owned and licensed by Digital Investigations Limited with the Windows 10 operating system. The machine is maintained solely for examination purposes. In the course of the examination process, I utilised various industry standard computer forensic techniques, of which I have practical knowledge and know to be a non-invasive, forensic data acquisition and analysis programs. In compliance with the Association of Chief Police Officers Good Practice Guide for Digital Evidence.

I have been instructed by Waterfords Solicitors to investigate the various claims made in the following BBC article relating to a blog allegedly written and amended by Dominic Cummings.

Article - <https://www.bbc.co.uk/news/business-52808059>

Signature: Tahir Butt

Signature Witnessed by:

I have produced the article as exhibit TB-1

I've been asked to reproduce the steps alluded to in the article with respect particularly to the timings of changes made to the identified blog, what blog sites are and how they work and how certain one can be about the date and time any of the alleged changes were made. An explanation of what the "Wayback Machine" is, and finally my expert opinion on the technical steps taken and conclusions drawn by the BBC in paragraph twelve of the article.

Blog Sites

A "blog" is a type of website which evolved in the mid 1990's from internet users running personal web pages postings about their personal lives, thoughts and social commentary. Often the posts appear in reverse chronological order (newer content first). Blogs typically run by individuals or small groups and present information in a conversational style. Like other websites the blog sites are hosted on the internet by internet web hosting providers. Typically a blogger would set up an account with the web hosting provider, and choose a website name. The website provider may charges for the service provided. To post content the blogger logs into his account with a username and password and posts content onto the blog.

The BBC article refers to a blog attributed to Dominic Cummings with the web address <https://dominiccummings.com/> I've produced a screenshot of part of the web page as exhibit TB/2.

The blog contains a number of sections including an "About" section which gives a brief summary of the career of the blogger including a contact email address of "dmc2.cummings@gmail.com" I produced a screenshot of part of the webpage as exhibit TB/3.

I used the website "<https://who.is>" to identify the webhost provider for the website <https://dominiccummings.com/> ". "<https://who.is>" analyses website addresses and identifying internet host servers the websites are stored on.

"<https://who.is>" indicated that the blog was stored on "wordpress.com" servers. "wordpress.com" is a popular commercial blog webhosting provider. I have produced a screenshot extract of the results as exhibit TB/4.

Signature: Tahir Butt

Signature Witnessed by:

"Wayback Machine"

"Wayback Machine" (www.web.archive.org) is a website based in the USA that describes itself as "an initiative of the Internet Archive" a non-profit organisation "building a digital library of Internet sites and other cultural artifacts in digital form".

The World Wide Web currently contains billions of webpages hosted by thousands of webhosting providers. Many of these website are update and amended daily. The "Wayback Machine" website claims to download a select number of these webpages on a periodic basis and archive the content of the webpages in date order, allowing users to access downloaded content from specific websites on specific days. Since its creation in 2011 the "Wayback Machine" claims to have downloaded and archived 446 billion webpages.

Analysis

I reproduced the steps alluded to in the article (exhibit TB/1). I visited the website "Wayback Machine" (www.web.archive.org) and searched for the webpage

"<https://dominiccumings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/>"

The website identified two snapshots of the webpage (within its downloaded archive) on 8th April 20 at 2202hrs and 3rd May 2020 at 0600hrs. I've produced a screenshot of this webpage result as exhibit TB/5.

I then used the website to compare the webpages downloaded and archived on the two dates. I observed the changes (Yellow indicates content deletion. Blue indicates content addition). I captured a screenshot of the changes identified in the article (exhibit TB/1) and produced the screenshot as exhibit TB/6.

I then examined the link to the "sitemap" for the website <https://dominiccumings.com/>. A site map is as a hierarchical list of pages contained within a website, it is often used to assist internet search engines to navigate websites. Within the coding of the sitemap I identified a "lastmod" (last modified) date and time for the webpage

"<https://dominiccumings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/>"

Signature: Tahir Butt

Signature Witnessed by:

as 14th April 2020 at 20:55. I have produced a screenshot of the relevant coding within the site map as exhibit TB/7.

There are a number of variables involved in creating a "sitemap". And the creation of a "lastmod" (last modified) date and time for the webpage with the "sitemap". Including how the "sitemap" file was created. Many web host providers including "wordpress.com" (exhibit TB-4) provide automated software to create website "sitemap", including programs like "Yoast SEO" and "Google XML". These plugin programs can be configured to change the "sitemap" file created. The "lastmod" (last modified) date and time can also vary depending on the source of the timestamp and how the automated "sitemap" software is configured. Having made that premise I observed the coding identified within exhibit TB-7 to be indicative of that webpage

"<https://dominiccumings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/>"

Being "lastmod" (last modified) at 2055hrs on the 14th April 2020.

Conclusions

Having reproduced the steps alluded to within the BBC article (exhibit TB/1) the data provided by "Wayback Machine" (www.web.archive.org) indicates that the webpage

"<https://dominiccumings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/>"

Changed between 8th April 20 at 2202hrs and 3rd May 2020 at 0600hrs. The website identifies the changes made between the two specified dates I've produced the changes identified as exhibit TB/6.

I observed that the changes identified (exhibit TB/6) matched the reference in the article on the "Bulletin of the Atomic Scientists" webpage specified.

"https://thebulletin.org/2019/02/human-error-in-high-biocontainment-labs-a-likely-pandemic-threat/?utm_source=Twitter&utm_medium=Twitter%20Post&utm_campaign=DavidKim_02252019"

I've produced the "Bulletin of the Atomic Scientists" article reference in the BBC article (exhibit TB/1) as exhibit TB/8 and a screenshot of the referenced text in the article as exhibit TB/9.

Signature: Tahir Butt

Signature Witnessed by:

I observed that the reference text (exhibit TB/9) was not present in the webpage download archive identified by the website "Wayback Machine" (www.web.archive.org) on the 8th April 20 at 2202hrs. Indicating that it had been added to the webpage between the 8th April 2020 at 2202hrs and the 3rd May 2020 at 0600hrs.

Given the caveats mentioned previously I also observed that the "sitemap" indicated that the webpage was "last modified" at 2055hrs on the 14th April 2020.

Signature: Tahir Butt

Signature Witnessed by:



Digital Investigations Ltd

Digital Forensics Report

Subject: Dominic Cummings Blog

Prepared for: Waterfords Law
80 High Street,
Brentford,
TW8 8AE

Prepared by: Tahir Butt
Digital Forensic Examiner
Digital Investigations Limited

Date: 12th July 2020



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8. Conclusions
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11. Glossary of Terms
12. Declaration and Statement of Truth



2. Qualifications and Experience

- 2.1 The report has been prepared by Tahir Butt. I am an Independent Digital Forensics Consultant. Having worked for the Metropolitan Police service for twenty-seven years, with the last fourteen years spent as a Senior Computer Forensic Examiner in the Met's Child Protection High-Tech Crime Unit.
- 2.2 I have successfully completed several specialist training courses in Digital Forensics, these include the National Specialist Law Enforcement Centre's (NSLEC) Core Skills in Data Recovery and Analysis course, the Royal Military College of Science's (RMCS - Cranfield University) Forensic Computing Foundation course, and the Foundation in Mobile Phone Forensics (Control-F).
- 2.3 I've also successfully completed a number of specialist certification programs in Digital Forensics including, Encase's Certified Examiner Certification Program (EnCE), 7Safe's Certified Cyber Investigator certification (CCI) and Certified Malware Investigator (CMI) certification.

3. Forensics Guidelines of Investigation

- 3.1 All examinations I conduct are carried out on a computer owned and licensed by Digital Investigations Limited with the Windows 10 operating system. The machine is maintained solely for examination purposes.
- 3.2 In the course of the examination process I utilised various industry-standard computer forensic techniques used for data acquisition and analysis. I know these processes to be non-invasive, and compliant with the Association of Chief Police Officers Good Practice Guide for Digital Evidence.

4. Scope / Instructions

- 4.1 I have been instructed by Waterfords Solicitors to investigate the various claims made in the following BBC article relating to a blog allegedly written and amended by Dominic Cummings.
- 4.2 Article – "<https://www.bbc.co.uk/news/business-52808059>"
I have produced the article as exhibit TB-1



- 4.3 I've been asked to reproduce the steps alluded to in the article with respect particularly to the timings of changes made to the identified blog.
- 4.4 To provide an explanation of what blog sites are, how they work and how certain one can be about the date and time any of the alleged changes were made.
- 4.5 To give an explanation of what the "Wayback Machine" is.
- 4.6 And finally my expert opinion on the technical steps taken and conclusions drawn by the BBC in paragraph twelve of the article.

5. **Blog Sites**

- 5.1 A "blog" is a type of website which evolved in the mid-1990s from internet users running personal web pages, postings about their personal lives thoughts and social commentary. Often the posts appear in reverse chronological order (newer content first). Blogs are typically run by individuals or small groups and present information in a conversational style.
- 5.2 Like other websites, the blog sites are hosted on the internet by internet web hosting providers. Typically a blogger would set up an account with the web hosting provider, and choose a website name. The website provider may charge for the service provided. To post content the blogger logs into his account with a username and password and posts content onto the blog.
- 5.3 Exhibit TB-1 (BBC article) refers to a blog attributed to Dominic Cummings with the web address <https://dominiccummings.com/> I've produced a screenshot of the "Home" page of the website as exhibit TB/2.
- 5.4 The blog contains a number of sections including an "About" section which gives a brief summary of the career of the blogger including a contact email address of "dmc2.cummings@gmail.com" I produced a screenshot of part of the webpage as exhibit TB/3.
- 5.5 I used the website "<https://who.is>" to identify the webhost provider for the website <https://dominiccummings.com/> ". "<https://who.is>" is a



website that analyses website addresses and identifies internet host servers the websites are stored on.

- 5.6 *"https://who.is"* indicated that the blog was stored on "wordpress.com" servers. "wordpress.com" is a popular commercial blog web hosting provider. I have produced a screenshot extract of the results as exhibit TB/4.

6. **"Wayback Machine"**

- 6.1 "Wayback Machine" (www.web.archive.org) is a website based in the USA that describes itself as "an initiative of the Internet Archive" a non-profit organisation "building a digital library of Internet sites and other cultural artifacts in digital form".
- 6.2 The World Wide Web currently contains billions of webpages hosted by thousands of web-hosting providers. Many of these website are updated and amended daily.
- 6.3 The "Wayback Machine" website claims to download a select number of these webpages on a periodic basis and archive the content of the webpages in date order, allowing users to access downloaded content from specific websites on specific days.
- 6.4 Since its creation in 2011 the "Wayback Machine" website claims to have downloaded and archived 446 billion webpages.

7. **Analysis**

- 7.1 I reproduced the steps alluded to in the article (exhibit TB/1), by visiting the website "Wayback Machine" (www.web.archive.org) and searching for the webpage
"https://dominiccummings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/"
- 7.2 The "Wayback Machine" website identified two snapshots of the webpage (within its downloaded archive) the first on 8th April 2020 at 2202hrs and the second on 3rd May 2020 at 0600hrs. I've produced a screenshot of this webpage result as exhibit TB/5.



- 7.3 I then used the website to compare the webpages downloaded and archived on the two dates. I observed the changes (yellow indicates content deletion and blue indicates content addition). I captured a screenshot of the changes identified and produced them as exhibit TB/6.
- 7.4 I then examined the link to the "sitemap" for the website <https://dominiccummings.com/>. A site map is as a hierarchical list of pages contained within a website, it is often used to assist internet search engines to navigate websites.
- 7.5 Within the coding of the sitemap I identified a "lastmod" (last modified) date and time for the webpage *"https://dominiccummings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/"* as the 14th April 2020 at 20:55. I have produced a screenshot of the relevant coding within the site map as exhibit TB/7.
- 7.6 There are a number of variables involved in creating a "sitemap", and the creation of a "lastmod" (last modified) date and time for the webpage within the "sitemap", including how the "sitemap" file was created.
- 7.7 Many web host providers including "wordpress.com" (exhibit TB-4) provide automated software to create a website "sitemap", including programs like "Yoast SEO" and "Google XML". These plugin programs can be configured to change the "sitemap" file created. The "lastmod" (last modified) date and time can also vary depending on the source of the timestamp and how the automated "sitemap" software is configured.
- 7.8 Having made that premise I observed the coding identified within exhibit TB-7 to be indicative of that webpage *"https://dominiccummings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible"*
Being "lastmod" (last modified) at 2055hrs on 14th April 2020.



8. Conclusions

- 8.1 Having reproduced the steps alluded to within exhibit TB/1 (BBC article) the data provided by “Wayback Machine” (www.web.archive.org) indicates that the webpage

“<https://dominiccummings.com/2019/03/04/the-most-secure-bio-labs-routinely-make-errors-that-could-cause-a-global-pandemic-are-about-to-re-start-experiments-on-pathogens-engineered-to-make-them-mammalian-airborne-transmissible/>”

changed between 8th April 2020 at 2202hrs and 3rd May 2020 at 0600hrs. The website identifies the changes made between the two specified dates. I’ve produced the changes identified as exhibit TB/6.

- 8.2 I observed that the changes identified (exhibit TB/6) matched the reference in the article on the “Bulletin of the Atomic Scientists” webpage specified.

“https://thebulletin.org/2019/02/human-error-in-high-biocontainment-labs-a-likely-pandemic-threat/?utm_source=Twitter&utm_medium=Twitter%20Post&utm_campaign=DavidKim_02252019”

- 8.3 I’ve produced the “Bulletin of the Atomic Scientists” article reference in the exhibit TB/1 (BBC article) as exhibit TB/8 and a screenshot of the referenced text in the article as exhibit TB/9.

- 8.4 I observed that the reference text (exhibit TB/9) was not present in the webpage download archive identified by the website “Wayback Machine” (www.web.archive.org) on 8th April 20 at 2202hrs. Indicating that it had been added to the webpage between the dates 8th April 2020 at 2202hrs and 3rd May 2020 at 0600hrs.

- 8.5 I also observed that the “sitemap” indicated that the webpage was “last modified” at 2055hrs on 14th April 2020.

- 8.6 To summarise, I agree with exhibit TB-1 (BBC article) conclusions that the blog page was edited, but my observations vary slightly with regards to the time and date period that those edits were made (see 8.1).

- 8.7 I also agree with the conclusions made in the article that at some stage between the two dates observed (see 8.1) that text was inserted into



the blog (see exhibit TB/6). This text matched the text observed in the Bulletin of Atomic Scientists (exhibit TB/9)

- 8.8 With regards to when exactly the blog webpage was edited and the blog websites "sitemap" (TB/7). As mentioned previously there are a number of caveats involved in the creation of a "sitemaps" (7.7). Having said that I would conclude that the "sitemap" (TB/7) indicates that the webpage was last modified on the 14th April 2020 at 20:55.
- 8.9 Although the "sitemap" (TB/7)" indicates that the webpage was last modified on the 14th April 2020 at 20:55. I observed no evidence of what those modifications were from the "sitemap".

9. List of Exhibits

- 9.1 TB-1 BBC's Dominic Cummings Article
- TB-2 "Dominic Cummings Blog" "Home" page screenshot
- TB-3 "Dominic Cummings Blog" "About" page screenshot
- TB-4 Website Host Screenshot
- TB-5 "Wayback Machine" archived dates screenshot
- TB-6 "Wayback Machine" webpage changes screenshot
- TB-7 "Dominic Cummings Blog" Sitemap coding
- TB-8 "Bulletin of the Atomic Scientists" article
- TB-9 "Bulletin of the Atomic Scientists" reference text screenshot



10. Exhibits

10.1 TB-1 BBC's Dominic Cummings Article

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Home	News	Sport	Reel	Worklife	Travel	Future	M
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Coronavirus: Why did Dominic Cummings say he predicted it?

By Faisal Islam

Economics editor

26 May 2020



Coronavirus pandemic





Of the many details about travel plans, eye tests, and drives made at Dominic Cummings's Rose Garden press conference on Monday, one thing stood out to me that does matter, and will matter well beyond the future of one adviser.

One of the absolutely core issues in assessing the government's early performance in combating the pandemic, is whether it left it too late to impose the lockdown.

Scientists involved in pandemic planning have pinpointed a specific error - that it was too reliant on existing mathematic modelling of the pandemic based on influenza. They say it had not accounted for the fact that coronavirus was a different virus.

This had two principal vital differences.

Coronavirus is far more contagious than the influenza models, and, unlike flu, there are no approved existing vaccines or treatments.

This rendered the available pandemic stockpiles of treatments and pre-purchase of tens of millions of vaccines unusable. So only testing, tracing, or forms of social distancing and lockdown were going to work.

So for the PM's chief adviser to claim, in the middle of his defence, "only last year I wrote explicitly about the danger of coronaviruses" is worthy of some inspection. Such prescience would indeed have been impressive and helpful, and he does have a long-standing and wellknown interest in mathematical modelling and big data.

Looking at his blog, there is one reference to coronavirus, and it was indeed in a blog written in March last year. But it wasn't quite as billed. It is a blog about the risk of a pandemic starting from a leak from a biological lab.

The point of it is that governments should pay money to "Red Teams" to try to break security at such institutions, including £1m to "honey trap" the security bosses.

If this is the writing that "explicitly" warned of the danger of coronaviruses, then it rather suggests that a key No 10 figure believes that biolab security is the relevant issue.

But then things get even stranger.

Mystery

The internet archive Wayback Machine, which tracks the changing versions of publicly available websites, shows that the blog was edited some time between 9 April and 3 May this year (after the pandemic started) to insert the reference to coronavirus and Chinese labs. This was first pointed out by a data scientist Jens Wiechers on social media, [and can be seen here](#).

It is in the form of [a new quote from an article](#) already linked to in the Bulletin of Atomic Scientists. It was not in the original blog.

And the sitemap of Mr Cumming's blog corroborates this, showing that this post was indeed edited at 20:55:20 on the evening of 14 April this year, [still available here](#). This happens to be the day Mr Cummings returned to work from his Durham trip.



- [I don't regret what I did, says Cummings](#)
- [The families who stayed away in lockdown](#)
- [Dominic Cummings: What did he do during lockdown?](#)
- [Analysis: Johnson failed to close down Cummings story](#)

It is a mystery why he felt the need to burnish his credentials as a coronavirus sage so much that he pointed to having explicitly warned about something that was only added to his blog after the event.

There is no other reference to coronavirus or Sars or Mers on his blog. There is a page on the mathematics of pandemic modelling and "herd immunity" in a long essay written on the education system in 2013, but no references to coronaviruses.

It is difficult to see why editing a year-old personal blog would have been on any list of priorities for any No 10 official on a day like that - in the middle of the period where hospital deaths had peaked the previous week, but care home deaths were still mounting.

But Mr Cummings clearly felt the need on Monday to point to examples of prescience on this specific issue.

The context of his quote on coronavirus was to help disprove the allegation, first made in the Sunday Times, that he had backed a so-called "herd immunity" strategy.

I've asked No 10 for a response on the change to his blog, the reference to Chinese biolabs, and whether he stands by the idea he explicitly wrote about the dangers of coronaviruses.

A source acknowledged that the blog was updated and pointed to the fact that the original blog from last year linked to the separate article [in the Bulletin of Atomic Scientists] which did discuss coronaviruses.

- **A SIMPLE GUIDE:** **What are the symptoms ?**
- **RISK AT WORK:** **How exposed is your job ?**
- **HOW A VIRUS SPREADS:** **An explanation**
- **RECOVERY:** **How long does it take to get better ?**

.....



10.2 TB-2 “Dominic Cummings Blog” “Home” page screenshot

Dominic Cummings's Blog

[Home](#) [About](#) [An index of blogs, articles, papers](#) [Education reform 2010-14](#) [My essay on an 'Odyssean' Education](#) [On the EU Referendum](#)

JANUARY 2, 2020

'Two hands are a lot' — we're hiring data scientists, project managers, policy experts, assorted weirdos...

This is possibly the single largest design flaw contributing to the bad Nash equilibrium in which ... many governments are stuck. Every individual high-functioning competent person knows they can't make much difference by being one more face in that crowd.' Eliezer Yudkowsky. At expert, LessWrong etc.

'[M]uch of our intellectual elite who think they have "the solutions" have actually cut themselves off from understanding the basis for much of the most important human progress.' Michael Nielsen, physicist and one of the handful of most interesting people I've ever talked to.

'People, ideas, machines — in that order.' Colonel Boyd.

'There isn't one novel thought in all of how Berkshire [Hathaway] is run. It's all about ... exploiting unrecognized simplicities.' Charlie Munger, Warren Buffett's partner.

'Two hands, it isn't much considering how the world is infinite. Yet, all the same, two hands, they are a lot.' Alexander Grothendieck, one of the great mathematicians.

✱

There are many brilliant people in the civil service and politics. Over the past five months the No10 political team has been lucky to work with some fantastic officials. But there are also some profound problems at the core of how the British state makes decisions. This was seen by pundit-world as a very eccentric view in 2014. It is no longer seen as eccentric. Dealing with these deep problems is supported by many great officials, particularly younger ones, though of course there will naturally be many fears — some reasonable, most unreasonable.

Now there is a confluence of: a) Brexit requires many large changes in policy and in the structure of decision-making, b) some people in government are prepared to take risks to change things a lot, and c) an engagement with a civilised society and Brits used to

Recent posts

'Two hands are a lot' — we're hiring data scientists, project managers, policy experts, assorted weirdos...

On the referendum #34: BATSIGNAL! DON'T LET CORBYN-STURGEON CHEAT A SECOND REFERENDUM WITH MILLIONS OF FOREIGN VOTES

On the referendum #33: High performance government, 'cognitive technologies', Michael Nielsen, Bret Victor, & 'Seeing Rooms'

On the referendum #24N: Actions have consequences

On the referendum #32: Science/productivity — a) small teams are more disruptive, b) 'science is becoming far less efficient'

Archive

Select Month

Follow me on Twitter

My Tweets



10.3 TB-3 “Dominic Cummings Blog” “About” page screenshot

Dominic Cummings's Blog

[Home](#) [About](#) [An index of blogs, articles, papers](#) [Education reform 2010-14](#) [My essay on an 'Odyssean' Education](#) [On the EU Referendum](#)

About

I read Ancient & Modern History at Oxford University (graduated 1994).

I worked in Russia 1994-7 on various projects.

I was Director of Research then Campaign Director of Business for Sterling and the 'no' campaign (to stop Britain joining the euro) 1999-2002.

I worked on various projects 2003-7, including trying to stop the EU Constitution being enacted (2004-5) and helping to run the referendum campaign against the North East Regional Assembly (2004) which won 80-20.

I was Michael Gove's main adviser September 2007 – January 2014, with a break May 2010-December 2010. (NB. BBC people in particular: I said in September 2013 I was leaving and I left voluntarily in January 2014, do not put me in your lists of 'people who were fired' as you are prone to.)

I have never been a member of a political party.

This page is for an essay I wrote over a few years, *'Some thoughts on education and political priorities'*, that (in draft form) was published by the Guardian on 11 October 2013.

This page gives an index of various things I've written.

In 2015/16 I ran the official leave campaign in the EU referendum, Vote Leave.

I run a company, *North Wood*, that tries to solve problems (management, political, communication).

Email me on: dmc2.cummings@gmail.com

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10.4 TB-4 Website Host Screenshot

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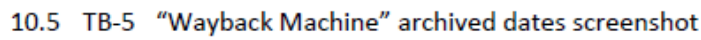
Name	Automatic Inc.
Whois Server	whois.sawbuck.com
Referral URL	http://www.automatic.com/
Status	clientTransferProhibited https://icann.org/epp#clientTransferProhibited

Important Dates

Expires On	2021-06-23
Registered On	2017-06-23
Updated On	2020-06-24

Name Servers

ns1.wordpress.com	198.181.116.9
ns2.wordpress.com	198.181.117.9
ns3.wordpress.com	192.0.74.9



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10.6 TB-6 “Wayback Machine” webpage changes screenshot

“But mandatory incident reporting to FSAP and NIH actually does provide sufficient data to quantify human error in BSL3 biocontainment labs...”

[An example:] A fourth release in 2014 from the CDC labs occurred when “Scientists inadvertently switched samples designated for live Ebola virus studies with samples intended for studies with inactivated material. As a result, **the samples with viable Ebola virus, instead of the samples with inactivated Ebola virus, were transferred out of a BSL-4 laboratory to a laboratory with a lower safety level for additional analysis**. While no one contracted Ebola virus in this instance, the consequences could have been dire for the personnel involved as there are currently no approved treatments or vaccines for this virus.”...

“In an analysis circulated at the 2017 meeting for the Biological Weapons Convention, a conservative estimate shows that the probability is about 20 percent for a release of a mammalian-airborne-transmissible, highly pathogenic avian influenza virus into the community from at least one of 10 labs over a 10-year period of developing and researching this type of pathogen... Analysis of the FOIA NIH data gives a much higher release probability — that is, a factor five to 10 times higher ...

“The avian flu virus **HSN1 kills 60 percent of people** who become infected from direct contact with infected birds. The mammalian-airborne-transmissible, highly pathogenic avian influenza created in the Fouchier and Kawaoka labs should be able to infect humans through the air, and the viruses could be deadly.

“But mandatory incident reporting to FSAP and NIH actually does provide sufficient data to quantify human error in BSL3 biocontainment labs...”

Among other things, the GAO report called attention to a well-publicized incident in which a Defense Department laboratory “inadvertently sent live Bacillus anthracis, the bacterium that causes anthrax, to almost 200 laboratories worldwide over the course of 12 years. The laboratory believed that the samples had been inactivated.” The report describes yet another well-publicized incident in China in which “two researchers conducting virus research were exposed to severe acute respiratory syndrome (SARS) coronavirus samples that were incompletely inactivated. The researchers subsequently transmitted SARS to others, leading to several infections and one death in 2004.”

The GAO identified three recent releases of Ebola and Marburg viruses from BSL4 to lower containment labs due to incomplete inactivation.

A fourth release in 2014 from the CDC labs occurred when “Scientists inadvertently switched samples designated for live Ebola virus studies with samples intended for studies with inactivated material. As a result, **the samples with viable Ebola virus, instead of the samples with inactivated Ebola virus, were transferred out of a BSL-4 laboratory to a laboratory with a lower safety level for additional analysis**. While no one contracted Ebola virus in this instance, the consequences could have been dire for the personnel involved as there are currently no approved treatments or vaccines for this virus.”...



10.7 TB-7 “Dominic Cummings Blog” Sitemap coding

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▼<url>
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  <mobile:mobile/>
  <lastmod>2020-04-14T20:55:20+00:00</lastmod>
  <changefreq>monthly</changefreq>
</url>
```

10.8 TB-8 “Bulletin of the Atomic Scientists” article

Human error in high-biocontainment labs: a likely pandemic threat

By [Lynn Klotz](#), February 25, 2019

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A CDC staff microbiologist examines reconstructed 1918 Pandemic Influenza Virus at a Biosafety Level 3-enhanced lab. Photo Credit: James Gathany/CDC

Incidents causing potential exposures to pathogens occur frequently in the high security laboratories often known by their acronyms, BSL3 (Biosafety Level 3) and BSL4. Lab incidents that lead to undetected or unreported laboratory-acquired infections can lead to the release of a disease into the community outside the lab; lab workers with such infections will leave work carrying the pathogen with them. If the agent involved were a potential pandemic pathogen, such a community release could lead to a worldwide pandemic with many fatalities. Of greatest concern is a release of a lab-created, mammalian-airborne-transmissible, highly pathogenic avian influenza virus, such as the airborne-transmissible H5N1 viruses created in the laboratories of Ron Fouchier in the Netherlands and Yoshihiro Kawaoka in Madison Wisconsin.

Such releases are fairly likely over time, as there are at least 14 labs (mostly in Asia) now carrying out this research. Whatever release probability the world is gambling with, it is clearly far too high a risk to human lives. Mammal-transmissible bird flu research poses a real danger of a worldwide pandemic that could kill human beings on a vast scale.

Human error is the main cause of potential exposures of lab workers to pathogens. Statistical data from two sources show that human error was the cause of, according to my research, 67 percent and 79.3 percent of incidents leading to potential exposures in BSL3 labs. These percentages come from analysis of years of incident data from the Federal Select Agent Program (FSAP) and from the National Institutes of Health (NIH). (Details may be found in the [Supplementary Material document](#).)

Understanding human error is important to calculating the probability that a pathogen will be released from a lab into the surrounding community, the first step in calculating the likelihood of a pandemic. A key observation is that human error in the lab is mostly independent of pathogen type and biosafety level. Analyzing the likelihood of release from laboratories researching less virulent or transmissible pathogens therefore can serve as a reasonable surrogate for how potential pandemic pathogens are handled. (We are forced to deal with surrogate data because, thank goodness, there are little data on the release of potentially pandemic agents.) Put another way, surrogate data allows us to determine with confidence the probability of release of a potentially pandemic pathogen into the community. In a [2015 publication](#), Fouchier describes the careful design of his BSL3+ laboratory in Rotterdam and its standard operating procedures, which he contends should increase biosafety and reduce human error. Most of



Fouchier's discussion, however, addresses mechanical systems in the laboratory.

But the high percentage of human error reported here calls into question claims that state-of-the-art design of BSL3, BSL3+ (augmented BSL3), and BSL4 labs will prevent the release of dangerous pathogens. How much lab-worker training might reduce human error and undetected or unreported laboratory acquired infections remains an open question. Given the many ways by which human error can occur, it is doubtful that Fouchier's human-error-prevention measures can eliminate release of airborne-transmissible avian flu into the community through undetected or unreported lab infections.

Human-error incident data. In its 2016 study for the NIH, "Risk and Benefit Analysis of Gain of Function Research," **Gryphon Scientific** looked to the transportation, chemical, and nuclear sectors to define types of human error and their probabilities. As Gryphon summarized in its findings, the three types of human error are skill-based (errors involving motor skills involving little thought), rule-based (errors in following instructions or set procedures accidentally or purposely), and knowledge-based (errors stemming from a lack of knowledge or a wrong judgment call based on lack of experience).

Gryphon claimed that "no comprehensive Human Reliability Analysis (HRA) study has yet been completed for a biological laboratory... . This lack of data required finding suitable proxies for accidents in other fields."

But mandatory incident reporting to FSAP and NIH actually does provide sufficient data to quantify human error in BSL3 biocontainment labs.

Federal Select Agent Program incident data. FSAP incident data were collected from **summary reports to Congress** for the years 2009 through 2015.

Three of the seven FSAP incident categories involve skill-based errors: 1) needle sticks and other through the skin exposures from sharp objects, 2) dropped containers or spills/splashes of liquids containing pathogens, and 3) bites or scratches from infected animals. Some skill errors, such as spills and needle sticks could be reduced with simple fixes (see below).

The rule-based and knowledge-based incident categories are: 4) pathogens manipulated outside of a biosafety cabinet or other equipment designed to protect exposures to infectious aerosols; 5) potential exposures resulting from non-adherence to safety procedures or deviations from lab standard operating procedures, and 6) failure or problem with



personal protective equipment—a mix of skill, rule, or knowledge-based errors.

The seventh category is mechanical or equipment failure, or defective labware. Another category not mentioned in the FSAP reports is failure to properly inactivate pathogens before transferring them to a lower biosafety level lab for further research.

During the 2009-2015 time period, FSAP received a total of 749 incident reports from select-agent research facilities. Conservatively, 594 or 79.3 percent of those incidents involve human error. (Details may be found in the [Supplementary Material](#).)

National Institutes of Health incident data. Incident reports to the NIH Office of Science Policy cover the period from 2004 through 2017 and BSL3 and BSL4 facilities. They were obtained through a Freedom of Information Act request.

There were no reported incidents from BSL4 facilities. Reporting to NIH is required only for incidents involving pathogens that contain recombinant DNA. While it is highly likely there have been incidents in BSL4 facilities, they may not have involved pathogens with recombinant DNA and so would not show up in the reports to NIH.

The 128 incident reports provide extremely detailed descriptions. The reports are often several-dozen pages long so almost no questions remain about details.

Of the 128 incidents, 86 or 67.2 percent were due to human error. This percentage is in the same ballpark as the FSAP reports.

Some human errors are “one-off,” meaning they happened once and likely won’t happen again. One-off errors are difficult to anticipate, so it is unlikely that one can devise meaningful changes in standard operating procedures to prevent them. Here is one example of a one-off error, slightly modified from an incident report:

A researcher was exchanging two plastic 24-well plates in the tabletop Sorvall centrifuge. While closing the lid, it was caught on a centrifuge wrench which was accidentally placed into the path of the lid. The wrench jumped and knocked one of the removed 24-well plates onto the counter. The plate landed at approximately a 45-degree angle and lost approximately half its contents to the bench top.



For some errors, there are procedural changes that should reduce their frequency. For instance, needle sticks can occur from syringes with sharp metal needles when being used to transfer liquids from one small container to another. For injecting animals, sharp metal needles are needed; but for liquid transfers, blunt-plastic needles would suffice. Also, dropping items could sometimes be prevented using lab carts to transport items from place to place, rather than carrying them by hand.

Here are three comments from the aforementioned **Fouchier publication**.

- “Only authorized and experienced personnel that have received extensive training can access the facility.”
- “All personnel have been instructed and trained how to act in case of incidents.”
- “For animal handling, personnel always work in pairs to reduce the chance of human error.”

The first two bullets speak to standard training of lab workers who work with particularly dangerous pathogens. It is unclear whether the diligent training of lab workers he outlines would substantially reduce human error:

The entities reporting incidents to NIH mention similar diligent training; nonetheless, undetected or unreported laboratory acquired infections occur with high frequency in these laboratories. Furthermore, it is unclear whether other laboratories creating and researching airborne-transmissible diseases are so carefully designed and diligent in their training..

The two-person rule for animal handling is a good idea that is not typically mentioned in the detailed NIH incident reports. Animal bites and needle punctures brought about by unruly lab animals are not uncommon.

Release from high biocontainment through incomplete inactivation.

Beyond the aforementioned undetected or unreported laboratory-acquired infections lies another route by which pathogens can be released from high biosecure level labs—incomplete inactivation.

Inactivation is designed to destroy the pathogenicity of an infectious agent, while retaining its other characteristics for research in which live pathogens are not needed. Since there are reliable inactivation procedures, failure to inactivate is a human error.

Pathogens are inactivated for research that can be performed in lower BSL2 biocontainment, where it is much easier to carry out. Research in BSL3 and BSL4 laboratories is difficult, both because of restricted movement in the personal protective equipment that must be worn and



because of restrictions in operating procedures that aim to minimize potential exposure to pathogens.

While incomplete inactivation does not usually directly cause a release into the community, researchers in BSL2 labs are at a much higher risk of infection, and their street clothes, hair, and skin can become contaminated. But incomplete inactivation is a route to *potential* release into the community.

The FSAP does not routinely collect data on incomplete inactivation, and it seems no one else does either. Thus, enough data to calculate probabilities for this type of incident are not available. But the **Government Accountability Office** (GAO) has weighed in on the issue. The GAO reports anecdotal evidence and some numbers on incomplete inactivation to support the contention that it is a serious issue. The office has identified 11 incidents, in addition to 10 incidents already identified by the FSAP. Notably, two of the incidents involved Ebola and Marburg viruses, which because of a lack of countermeasures (vaccines and antivirals) are researched at BSL4 facilities.

Among other things, the GAO report called attention to a well-publicized incident in which a Defense Department laboratory “inadvertently sent live *Bacillus anthracis*, the bacterium that causes anthrax, to almost 200 laboratories worldwide over the course of 12 years. The laboratory believed that the samples had been inactivated.” The report describes yet another well-publicized incident in China in which “two researchers conducting virus research were exposed to severe acute respiratory syndrome (SARS) coronavirus samples that were incompletely inactivated. The researchers subsequently transmitted SARS to others, leading to several infections and one death in 2004.”

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The CDC has issued a report on this mixup, and the steps they have taken to avoid this *particular* error in the future.

All these incidents confirm the role of incomplete inactivation that would lead to an increased likelihood of release into the community from a BSL2 lab. These are all human errors, some involving BSL4 pathogens. Along with the observation that other human errors are the cause of more than two-thirds of potential exposures in BSL3 labs, it is clear that state-of-the-art laboratory design will not prevent release into the community.

The probability of release into the community. In an analysis circulated at the 2017 meeting for the Biological Weapons Convention, a conservative estimate shows that the probability is about 20 percent for a release of a mammalian-airborne-transmissible, highly pathogenic avian influenza virus into the community from at least one of 10 labs over a 10-year period of developing and researching this type of pathogen. This percentage was calculated from FSAP data for the years 2004 through 2010.

Analysis of the FOIA NIH data gives a much higher release probability—that is, a factor five to 10 times higher, based on a smaller number of incident reports.

While there is no obvious reason in the NIH data that would explain this high probability, exposures and latent (not-active) infections with *M. tuberculosis* was indicated in four incident reports. *M. tuberculosis* is not a select agent so incidents involving it would not necessarily be reported to the FSAP. Tuberculosis is highly contagious by the airborne route, so it might be easier to acquire a TB infection in the lab. Unfortunately, airborne TB infections might be a harbinger of what could occur in research on airborne-transmissible flu.

Facility-reported descriptions of the 11 relevant incidents are provided in the Supplementary Material (Appendix 2). Lab-acquired infections are often discovered some time after the incident occurred. Only for three were the causes confirmed to be human error. For the other eight, neither the infected lab workers nor facility officials knew how the infection occurred. While it is likely that human error was involved in many of these eight infections, their causes will never be known.

Likelihood that mammalian-airborne-transmissible, highly pathogenic avian influenza release could cause a deadly pandemic. The avian flu virus H5N1 kills 60 percent of people who become infected from direct contact with infected birds. The mammalian-airborne-transmissible, highly pathogenic avian influenza created in the Fouchier and Kawaoka labs



should be able to infect humans through the air, and the viruses could be deadly.

A release into the community of such a pathogen could seed a pandemic with a probability of perhaps 15 percent. This estimate is from an average of two very different approaches. One approach involves purely mathematical branching theory, where Harvard researcher Marc Lipsitch and coworkers provide a graph in which, conservatively, the probability that a pandemic is seeded from a single release is about 20 percent. In the second approach, where infection progress through the community from person to person is simulated, Bruno Kessler Foundation researcher Stefano Merler and coworkers found that there is a probability from five percent to 15 percent that a single release could seed a pandemic. How deadly and how transmissible such viruses are in humans is not known.

Dealing realistically with human errors in lab research. Human error will continue to play a major role in laboratory incidents, and undetected or unreported laboratory acquired infections and incomplete inactivation incidents will continue to occur. No matter how well facilities are designed to prevent release into communities, human error will dodge design.

For an already identified 14 labs creating or researching mammalian-airborne-transmissible, highly pathogenic avian influenza, the potential 16 percent probability of a laboratory release into the community over five years of research (a result found in a study now being prepared for publication) is already uncomfortably high. NIH incident reports indicate possibly much higher probabilities of a such a release—thus, a greater likelihood of a pandemic. This does not take into the account a release from incomplete inactivation. Combining release probability with the not insignificant probability that an airborne-transmissible influenza virus could seed a pandemic, we have an alarming situation.

Those who support mammalian-airborne-transmissible, highly pathogenic avian influenza experiments either believe the probability of community release is infinitesimal or the benefits in preventing a pandemic are great enough to justify the risk. For this research, it would take extraordinary benefits and significant risk reduction via extraordinary biosafety measures to correct such a massive overbalance of highly uncertain benefits to too-likely risks.

Whatever probability number we are gambling with, it is clearly far too high a risk to human lives. There are experimental approaches that do not involve live mammalian-airborne-transmissible, highly pathogenic avian influenza which identify mutations involved in mammalian airborne transmission. These “safer experimental approaches are both more



scientifically informative and more straightforward to translate into improved public health..." Asian bird flu virus research to develop live strains transmissible via aerosols among mammals (and perhaps some other potentially pandemic disease research as well), should for the present be restricted to **special BSL4 laboratories** or augmented BSL3 facilities where lab workers are not allowed to leave the facility until it is certain that they have not become infected.

It must be emphasized that the focus here is for only a very small subset of pathogen research. Most pathogen research should proceed unimpeded by unnecessary regulations.

10.9 TB-9 "Bulletin of the Atomic Scientists" reference text screenshot

some numbers on incomplete inactivation to support the contention that it is a serious issue. The office has identified 11 incidents, in addition to 10 incidents already identified by the FSAP. Notably, two of the incidents involved Ebola and Marburg viruses, which because of a lack of countermeasures (vaccines and antivirals) are researched at BSL4 facilities.

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A fourth release in 2014 from the CDC labs occurred when "Scientists inadvertently switched samples designated for live Ebola virus studies with samples intended for studies with inactivated material. As a result, the samples with viable Ebola virus, instead of the samples with inactivated Ebola virus, were transferred out of a BSL-4 laboratory to a laboratory with a lower



11. Glossary of Terms

BBC: British Broadcasting Corporation

Blog: webpage listing text, images, or other objects that are arranged in a chronological order.

Code: term used to describe text that is written using a computer programming language.

Downloading: Is the transmission of a file from one computer system to another.

Digital Forensics: The process involves the extraction, identification and analysis of digital data.

Encase: Popular Software used for digital Forensics

Malware: Malware is malicious software designed to make unauthorised changes to your operating system.

Operating System: Is the most important program that manages device hardware

Plugin: is a software add-on that is installed on a program, enhancing its capabilities.

Sitemap: a hierarchical list of pages contained within a website

Screenshot: is an image or partial image of what is displayed on screen

URL: Uniform Resource Locator is a reference (an address) to a resource on the Internet.

“Wayback Machine” - Webpage (www.web.archive.org). Webpage archiving website

Web host: A web host is a company in charge of a web page and all its related content

Webpage: a webpage is a document often written in HTML code that is viewed in an Internet browser.



12. Declaration

I Tahir Butt declare that:

1. I understand that my duty is to help the court to achieve the overriding objective by giving independent assistance by way of objective, unbiased opinion on matters within my expertise, both in preparing reports and giving oral evidence. I understand that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied with and will continue to comply with that duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if for any reason my existing report requires any correction or qualification.
11. I understand that:
 - a. My report will form the evidence to be given under oath or affirmation;



- b. the court may at any stage direct a discussion to take place between experts;
 - c. the court may direct that, following a discussion between the experts, a statement should be prepared showing those issues which are agreed and those issues which are not agreed, together with the reasons;
 - d. I may be required to attend court to be cross-examined on my report by a cross-examiner assisted by an expert.
 - e. I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
12. I have read Part 19 of the Criminal Procedure rules and I have complied with its requirements.
13. I confirm that I have acted, to the best of my knowledge and belief, in accordance with the current version of the Code of Conduct published by the Forensic Science Regulator.

Statement of Truth

I confirm that the contents of this report are true to the best of my knowledge and belief and that I make this report knowing that, if it is tendered in evidence, I would be liable to prosecution if I have wilfully stated anything which I know to be false or that I do not believe to be true.

Tahir Butt

Signed

Tahir Butt

Appendix 3

Transcript of DC Rose Garden Interview :

Around midnight on Thursday, the 26th of March, I spoke to the prime minister. He told me that he tested positive for Covid. We discussed the national emergency arrangements for No.10, given his isolation and what I would do in No. 10 the next day. The next morning, I went to work as usual. I was in a succession of meetings about this emergency.

I suddenly got a call from my wife who was at home looking after our four year old child. She told me she suddenly felt badly ill. She'd vomited and felt like she might pass out. And there'll be nobody to look after our child. None of our usual childcare options were available. They were alone in the house. After very briefly telling some officials in No.10 what had happened, I immediately left the building, ran to a car and drove home.

This was reported by the media at the time who saw me run out of No. 10. After a couple of hours, my wife felt a bit better. There were many critical things at work and she urged me to return in the afternoon and I did. That evening, I returned home and discussed the situation with my wife.

She was ill. She might have Covid, though she did not have a cough or a fever. At this point, most of those who I work with most closely, including the prime minister himself and others who sit within 15 feet of me every day, either had had symptoms and had returned to work or were absent with symptoms. I thought there was a distinct probability that I had already caught the disease. I had a few conflicting thoughts in my mind.

First, I was worried that if my wife and I were both seriously ill, possibly hospitalised, there was nobody in London that we could reasonably ask to look after our child and exposed themselves to Covid. My wife had felt on the edge of not being able to look after him safely a few hours earlier. I was thinking, what if the same or worse happens to me? There's nobody here that I can reasonably ask to help. The regulations make clear, I believe the risks to the health of a small child were an exceptional situation, and I had a way of dealing with this that minimised risk to others.

Second, I thought that if I did not develop symptoms, then I might be able to return to work to help deal with the crisis. There were ongoing discussions about testing government staff in

order to keep people like me working rather than isolating. At this point, on the Friday, advisers such as myself had not been included in the list of who were tested. But it was possible that this might change the following week. Therefore, I thought that after testing negative, I could continue working.

In fact, this did not change and special advisers were not tested and I have never been tested. Third, there had been numerous false stories in the media about my actions and statements regarding Covid. In particular, there were stories suggesting that I had opposed [lockdown](#) and even then I did not care about many deaths.

For years, I have warned of the dangers of pandemics. Last year I wrote about the possible threat of coronaviruses and the urgent need for planning. The truth is, that I had argued for lockdown. I did not oppose it. But these stories had created a very bad atmosphere around my home. I was subject to threats of violence. People came to my house shouting threats. There were posts on social media, encouraging attacks. There were many media reports on TV showing pictures of my house.

I was also worried that given the severity of this emergency, this situation would get worse. And I was worried about the possibility of leaving my wife and child at home all day and off into the night while I worked in No.10. I thought the best thing to do in all the circumstances was to drive to an isolated cottage on my father's farm. At this farm, my parents live in one house. My sister and her two children live in another house, and there was a separate cottage roughly 50 metres away from either of them.

My tentative conclusion on the Friday evening was this: if we are both unable to look after our child, then my sister or nieces can look after him. My nieces are 17 and 20. They are old enough to look after him, but also young enough to be in the safest category. And they had extremely kindly volunteered to do so if needed.

But, I thought, if I do not develop symptoms and there is a testing regime in place at work, I could return to work if I tested negative. In that situation, I could leave my wife and child behind in a safe place, safe in the form of support from family for shopping in emergencies, safe in the sense of being away from home which had become a target and also safe for

everybody else because they were completely isolated on a farm and could not infect anybody.

Contrary to some media reports, there are no neighbours in the normal sense of the word. The nearest other homes are roughly half a mile away. So in this scenario, I thought that they could stay there for a few weeks. I could go back to work, help colleagues and everybody, including the general public, would be safe.

I did not ask the prime minister about this decision. He was ill himself and he had huge problems to deal with. Everyday, I have to exercise my judgment about things like this and decide what to discuss with him. I thought I would speak to him when the situation clarified over coming days, including whether I had symptoms and whether there were tests available. Arguably, this was a mistake, and I understand that some will say that I should've spoken to the prime minister before deciding what to do.

So I drove the three of us up to [Durham](#) last night, arriving roughly at midnight. I did not stop on the way. When I worked the next morning, Saturday the twenty eighth of March, I was in pain and clearly had Covid symptoms, including a bad headache and a serious fever.

Clearly, I could not return to work any time soon. For a day or two, we were both ill. I was in bed. My wife was ill, but not ill enough that she needed emergency help. I got worse. She got better. During the night of Thursday, the 2nd of April, my child woke up. He threw up and had a bad fever. He was very distressed. We took medical advice which was to call 999. An ambulance was sent, they assessed my child and said he must go to hospital. I could barely stand up. My wife went with him in the ambulance. I stayed at home. He stayed the night in the hospital. In the morning, my wife called to say that he had recovered, seemed back to normal. Doctors had tested him for Covid and said that they should return home. There were no taxis. I drove to the hospital, picked them up, then returned home. I did not leave the car or have any contact with anybody at any point on this short trip.

The hospital's, I don't know what, roughly five miles or something away two miles, three miles four miles, something like that. A few days later, the hospital said that he tested negative. After I started to recover, one day in the second week, I tried to walk outside the house. At one point the three of us walked into woods owned by my father, next to the

cottage that I was staying in. Some people saw us in these woods from a distance, but we had no interaction with them. We had not left the property. We were on private land. By Saturday, the 11th of April, I was still feeling weak and exhausted. But other than that, I had no Covid symptoms. I thought that I'd be able to return to work the following week, possibly part time.

It was obvious that the situation was extremely serious. The Prime Minister had been gravely ill. Colleagues were dealing with huge problems and many were ill or isolating. I felt like I ought to return to work if possible, given I was now recovering in order to relieve the intense strain at No. 10. That Saturday, I sought expert medical advice. I explained our family's symptoms and all the timings, and I asked if it was safe to return to work on Monday, Tuesday, seek child care and so on. I was told that it was safe and I could return to work and seek childcare.

On Sunday 12 April, 15 days after I had first displayed symptoms, I decided to return to work. My wife was very worried, particularly given my eyesight seemed to have been affected by the disease. She didn't want to risk a nearly 300-mile drive with our child, given how ill I had been. We agreed that we should go for a short drive to see if I could drive safely. We drove for roughly half an hour and ended up on the outskirts of [Barnard Castle](#) town. We did not visit the castle. We did not walk around the town. We parked by a river. My wife and I discussed the situation. We agreed that I could drive safely, we should turn around, go home. I felt a bit sick. We walked about 10 to 15 metres from the car to the river bank nearby. We sat there for about 15 minutes. We had no interactions with anybody. I felt better. We returned the car. An elderly gentleman walking nearby appeared to recognise me. My wife wished him Happy Easter from a distance, but we had no other interaction.

We headed home. On the way home, our child needed the toilet. He was in the back seat of the car. We pulled over to the side of the road, my wife and child jumped out into the woods by the side of the road. They were briefly outside. I briefly joined them. They played for a little bit and then I got out of the car, went outside. We were briefly in the woods. We saw some people at a distance. But at no point did we break any social distancing rules. We then got back in the car and went home.

We agreed that if I continued to improve then the next day, we should return to London and I would go back to work. We returned to London on the evening of Monday 13 April, Easter

Monday. I went back to work in No. 10 the next morning. At no point between arriving and leaving Durham did any of the three of us enter my parents' house or my sister's house. Our only exchanges were shouted conversations at a distance. My sister shopped for us and left everything outside.

In the last few days, there have been many media reports that I returned to Durham after 13 April. All these stories are false. There is a particular report that I returned there on 19 April. Photos and data on my phone prove this to be false. And local CCTV, if it exists, would also prove that I'm telling the truth that I was in London on that day. I was not in Durham.

During this two-week period, my mother's brother died with Covid. There are media reports that this had some influence on my behaviour. These reports false. This private matter did not affect my movements. None of us saw him. None of us attended his funeral. In this very complex situation, I tried to exercise my judgment the best I could.

I believe that in all circumstances I behaved reasonably and legally, balancing the safety of my family and the extreme situation in No.10 and the public interest in effective government to which I could contribute.

I was involved in decisions affecting millions of people, and I thought that I should try to help as much as I could do. I can understand that some people will argue that I should have stayed at my home in London throughout.

I understand these views. I know the intense hardship and sacrifice that the entire country has had to go through. However, I respectfully disagree. The legal rules inevitably do not cover all circumstances, including those that I found myself in. I thought and I think today that the rules, including those regarding small children in extreme circumstances, allowed me to exercise my judgment about the situation I found myself in, including the way that my London home had become a target -- and all the complexity of the situation.

I accept, of course, that there is room for reasonable disagreement about this. I could also understand some people think I should not have driven at all anywhere.

But I had taken medical expert medical advice. It was 15 days after symptoms. I'd been told that I could return to work and employ childcare. I think it was reasonable and sensible to make a short journey before embarking on a five-hour drive to see whether I was in a fit state

to do this. The alternative was to stay in Durham rather than going back to work and contributing to the government's efforts. I believe I made the right judgment, though I can understand that others may disagree with that.

I've explained all of the above to the Prime Minister. At some point during the first week where we were both sick and in bed, I mentioned to him what I had done. Unsurprisingly, given the condition we were in, neither of us remember the conversation in any detail. I did not make my movements public at the time because my London home was already a target. I did not believe that I was obliged to make my parents' and my sister's home a target for harassment as well. I understand that millions of people have seen media coverage of this issue. I know that millions have endured awful hardship, including personal tragedies, over the past few months, and people are suffering every day. And I know the British people hate the idea of unfairness. I wanted to explain what I thought, what I did and why, over this period, because I think that people like me who helped to make the rules should be accountable for their actions.

Dominic Cummings Rose Garden Address Q&A

Key

Red- Durham related

Green- Barnard Castle related

Time stamps are spaced roughly five minutes apart.

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I'm happy to answer questions from the media who are here. Sorry, I've got a, I've got a list and I was told to ask to ask people in this order. Laura.

Laura K'bg: Thanks so much Mr Cummings. Do you regret what you did? Because many people in this country have made heart breaking sacrifices in the last couple of months in order to stick to the rules that you were a part of putting together and many people may have listened to you and think you have made your own interpretation and do you understand for some people it seems like there was one version of the rules for you and one version of the rules for everyone else.

Cummings: Thank you Laura, no I don't, I don't regret what I did as I said I think reasonable people may well disagree about how I thought about what to do in these circumstances but I think that what I did was actually reasonable in these circumstances. In terms of the rules I think that the rules make clear if you're dealing with small children that can be exceptional circumstances and I think the situation I was in was exceptional circumstances and I think the way I dealt with it was the least risk for everyone concerned if my wife and I were both unable to look after our 4 year old.

Laura: It may sound to many that you were using a loophole that was in complete contrast to the message people heard day after day from Number 10: Stay at Home, Stay at Home, Stay at Home. You understand why some people are really angry about this, not just respectfully disagree with it but are furious.

Cummings: I certainly do, um, you know I've seen some of the media obviously over the last couple of days and I'm not surprised that a lot of people are very angry and lots of people I know if, if you're someone sitting at home watching all the media over the last three days then I think lots of people would be very angry and I completely understand that, but I think, I hope and think that today when I've actually explained all the circumstances about it I think people realise this was a very complicated tricky situation and I was trying to weigh up a lot of different things, some people might have behaved differently in some ways, as I said you know, arguably it was a mistake that I didn't call the Prime Minister on the Friday night and I just did what I thought was the right thing to do but I have to make decisions like that everyday and um, yes I understand that people watching the media could be very upset about what's happened but I think I've explained why.

Laura: You don't offer any regret any apology to people who didn't have the ability to make the decisions that you did, who didn't have the resources to do what you did.

Cummings: Um, as I said I think you know, obviously I thought a lot about what I did over this period, what things I could have done better, with this one of the things I could have done better in general with the whole in dealing with the whole crisis um uh there's definitely a lot of things I could have done better in the last few months but I think what I did for God (?) in this 14 days I think that um I behaved reasonably. Is there anything else you'd like to ask? Um, Robert.

[18:28]

Robert Peston: So just to be absolutely clear, in this 14 day period and subsequently, **apart from one visit to Durham and back** and a **trip to Barnard Castle**, neither you or Mary have been anywhere else at all? Also, millions of people haven't seen their parents for months now, can you just tell us a bit more about the nature of your contact with your parents and finally um your own scientists are worried, they said this last night, that by introducing an element of personal discretion into the interpretation of the rules you are putting lives at risk. What would you say to them and what would you say to us to reassure us?

Cummings: Thanks Robert. You asked whether its true that over this 14 day period that I didn't go, that we didn't go anywhere else apart from off on the car on day 15, no that's not correct...

Robert: Apart from (inaudible) Castle

Cummings: Yes exactly there was the trip to hospital um and then there was the drive on day 15 but apart from that neither of us left.

Robert: And nothing since?

Cummings: Nothing since in terms of?

Robert: Just trips that break the rules as it were.

Cummings: No I mean I left, I mean I'm not exactly sure where the boundaries of London are but as far as I'm aware the only time that I left London since Tuesday the 14th was to go to Chequers for meetings with the Prime Minister.

Robert: And that would be with Mary as well, because you're a household.

Cummings: Yes, I mean Mary and I have been together since we've returned.

Robert: And then on this issue of contact with your parents.

Cummings: So, obviously, so, neither Mary nor I have been tested so neither of us could be definitively sure about what our situation was, Mary had been ill and then recovered but she hadn't had a cough or fever. I pretty clearly seemed to have Covid and talking to medical experts they

thought that but I wasn't tested but obviously our default mode was assume all three of us have got it.. So I was in a (inaudible) 50 metres or so from everybody else, obviously we kept very very far away from them, there are various reports that I visited them, that I was staying with them, that's all completely untrue, my parents are in their 70s. Obviously I did not want to give them um this disease and so we stayed very far away. We did have some conversations, but they were, we were on a farm and they were shouted conversations from a distance they weren't some of the things that had been reported. In terms of introducing a question of discretion, I don't, I'm not seeking to introduce anything or any element of discretion, to me the rules are there they talk about what to do with um they talk about exceptional circumstances with small children uh I was trying to weigh up on that Friday night conflicting things between what happens if we're both ill? Who's going to look after him? What's the safest way of doing that? What if I, is there a way to go back to work the following week before the testing system changes which was being discussed but did not in fact happen, I was trying to weigh all of those things up. Given that, I think that, I don't believe that I broke the rules.

Robert: Its not just breaking the rules, it's the SBIP and SPIM members last night said that they think you introduced the idea that if your personal circumstances allow you can do something different to what the simple rules say and they are very worried that will make it much harder to contain the disease.

Cummings: I think they're right to be worried, the coverage over the last couple days could encourage people to behave in certain ways but with great respect to them they made those comments without knowing what had actually happened and I think that's one of the reasons why now it would have been better to have made this statement earlier but as it was, well I didn't but I think it would have been better to do it earlier for sure and that would have also I think some of those guys being themselves confused by what they read. Beth.

[23:26]

Beth Rigby: Mr Cummings, thousands of people watching this, ordinary families have put up with all kinds of restrictions and hardships regardless of their medical and family requirements, people not

going to funerals, people not even going in to hospital when their kids have been having cancer treatment. Why are you so different? What those people I think see here is that there's one rule for you, one of the most powerful people in this country, and there's another rule for them. Don't you think at the very least that you owe them an apology?

Cummings: Um I don't think I'm so, I don't think I'm so different and I don't think there's one rule for me and one rule for other people. As I said, I think that um, I looked at the, I knew what the guidance was, it talks about exceptional circumstances with small children and I think that in all circumstances I behaved as reasonably and legally as I said.

Beth: But people will be listening to this for days, **government ministers have obfuscated about whether you went to Barnard Castle, no information put out.** This is meant to be the peoples' government isn't it but you've badly misjudged public mood on this. This hasn't damaged the Prime Minister; it has undermined your policy and its undermined public confidence in the government. It could even now threaten public health if people decide that the rules don't matter. How can you even countenance at the moment staying on and not resigning?

Cummings: As I said, I think, I think there is understandable anger but a lot of that is based on reports in the media that have not been true and um its extremely regrettable but um the uh the media that were reporting some of these things that were wrong were told they were wrong but they reported them anyway and that has caused a lot of anger. I know, a **lot of people have shouted at me in the street 'Why did you go back? Why did you go back to see your parents just because you wanted to?' But I did not do that.**

Beth: Okay, **I'll just ask you one more thing: You went 260 miles, you didn't stop, but you didn't think that you ought to check with the Prime Minister knowing how that might look when we were in the height of lockdown** when we were all being told not to go anywhere and to stay at home and to self isolate if you had Covid. I know you have circumstances but how could you not even check with your boss?

Cummings: Well as I said, I think that you know, I think that's a very reasonable question and I think that what a lot of people would say that I ought to have called the Prime Minister about it but you know all I can say is what I said earlier about what my, what my state of mind was at the time, he himself had just tested positive hours earlier, he was ill, he was upstairs in Number 10 in bed, he had a million things on his plate, we all had a million things on our plates we were trying to do lots of things. One of the things I have to decide everyday is what to bother the Prime Minister with and what not to bother the Prime Minister with and you know the honest truth about my job is that there are endless problems all day long and I can't go to him all day asking him what do you think about this, what do you think about the other, otherwise what's the point of having people like me around. I have to get on with things, I have to make decisions. Sometimes I may do the right thing and sometimes I make mistakes.

Beth: I should stop now but in retrospect do you wish you'd check with him first?

Cummings: I don't know is the honest truth. About that particular thing maybe I should have done but you know I have to protect his time, there are lots of really big issues that he won't know/no no? (unclear) The Prime Minister's time is just about the most valuable commodity that exists within the government so you must be very careful with what you go to him with and what you don't go to him with and I have to make that judgement literally dozens of times a day, um and I made that judgement in a very short period of time in very extreme circumstances and as I said, I mean, at the time I thought it was the right thing to do but I also completely understand that people think it was a mistake and in fact I should have spoken to him about it um and as I said I did actually speak to him about it a few days later but neither of us can really remember exactly what I even said because we were both in pretty bad shape. Gary Gibbon.

[28:26]

Gary Gibbon: Yes can I just be uh clear about that, yesterday you had a face to face with the Prime Minister about all the circumstances around this trip and those two key or so weeks but he's known about your excursion north for about a month and a half and he didn't ask you anything until yesterday?

Cummings: So um, regarding the first part of your question, yes, I mean essentially what I've just told you guys is what I told the Prime Minister yesterday and I went through all-

Gary Gibbon: Did he ask you about it before that? (not very clear)

Cummings: Uh yes he asked me about it on, was it Friday night that the story broke I think, I can't remember if it was Friday night-

Gary Gibbon: So he knew, it was when it was public he was interested he didn't ask you anything before that? He just knew?

Cummings: Um so, as I said before, we spoke about it in the week after it happened, I can't remember what day. In the days following, we were both in bed ill we had a few conversations on the phone-

Gary Gibbon:... he knew for a long time.

Cummings: Well as I said, I spoke to him about it then, I told him about that but to be honest that was like the least of the things we were thinking like my movements were not part of our, really part of our conversation, we were talking about-

Gary Gibbon: ... the public health message the government is putting out there, do you, you say you don't regret what you've done and you think you acted correctly.

Cummings: We were talking about vaccines, we were talking about treatments, we were talking about you know hundreds of very important things and we did not spend a lot of time talking about me or where I was or my own circumstances.

Gary Gibbon: Let me ask you about one of these very important things- with tracing perhaps kicking off in a big way in the coming weeks, people will be asked to isolate. The public health message would never have been more critical perhaps. Do you think public adherence to those instructions will be weaker or stronger as a result of your recent activities?

Cummings: Well I hope it won't affect it and I hope that um that now the people know actually happened that some of the false stories that have been circulating and driving a lot of people understandably mad about it, then I hope that people realise.

Gary Gibbon: You've stood up the central story in this allegation that you drove a very long way from home when everyone was told to be at home. If there was more leeway in these instructions than we thought why didn't you tell everyone about that?

Cummings: Well with great respect Gary-

Gary Gibbon ... who else would have driven that distance? (unclear)

Cummings: I'm trying to answer the question, with great respect, its not just a simple matter in the regulations, the regulations describe various exceptional circumstances where it may not be possible to follow the rules. It doesn't say you must stay at home in all circumstances, it says there are some circumstances which you won't be able to follow these rules and it seemed to me that I was in such an exceptional circumstance and I was trying to judge, balance all of these complicated things.

Gary Gibbon: People will be staggered to hear you say that when the message was so clear: stay home. Is the fact that the Prime Minister can't do his job without you?

Cummings: The guidance says if you are living with children- I'm reading out the actual guidance- If you're living with children, keep following this advice to the best of your ability, however, we are aware that not all these measures will be possible. What we have seen so far is the children of

Corona appear to be less severely affected, its never the less important to do your best to follow this guidance. Now you know, you know as well as I do that there are that the deputy chief medical officer has discussed basically discussion about it, if you've got small children, if you've got a child that's four years old and neither of you can look after him, the guidance doesn't say you've just got to sit there, so as I've said I think I behaved reasonably in all of these circumstances - given all these circumstances and the different things I had to try and weigh up. Jason Groves.

Jason Groves: Hi, um, you blame the media for this mess that you've got the government into, do you accept that you've, whatever legal nicety you may have to say that you haven't broken the letter of these regulations but you've driven a coach and horses through the spirit of them and that is why people are so cross about it?

Cummings: I don't agree. I think that's not, no I don't agree.

[33:26]

Jason Groves: So let's go through it shall we? You left London with your wife who had coronavirus symptoms, completely against the regulations. You're up in Durham and you decide to go for a drive on a weekend when a few yards from here, the foreign secretary that weekend was telling us to stay at home and save lives. You went for a drive, you sat by a river, you went for a walk the woods, I mean you may or may not have a way of justifying this to yourself and possibly there may be some legal loophole, but you've broken the spirit of it haven't you?

Cummings: No, I don't think that I have um, just to correct one thing. When we left my wife did not have a cough she did not have a fever, those are the two symptoms that were mentioned. She was ill, she'd thrown up but we didn't, as I said before, we didn't know whether or not she had Covid or not, um. Secondly, secondly, secondly, as I said earlier one, the walk in the woods was on private land, I didn't leave our property to for a walk in the woods and that's perfectly reasonable behaviour.

Jason Groves: You stopped on the way back from Barnard Castle.

Cummings: Yeah I was driving back from from from Barnard Castle and uh um, my child, the four year old was in the car seat in the back, he said dad I need to go to the toilet, we pulled into the side of the road, he jumped out with my wife. I don't think any reasonable person would say that I behaved, that that's bad behaviour.

Jason Groves: You've plainly had a tough time, I don't think anyone would argue with that but there's lots of other people who've had a tough time, I mean I'd like to finish by, we had a letter today from Andrew and Sarah in Wiltshire uh their daughter and son in law live 10 miles from them and they've got two children. They came down with Covid and they said imagine our frustration being so near but not being able to help it was a big sacrifice that were made and they feel like mugs now. I mean they want you to resign, did you offer to resign when you saw the Prime Minister?

Cummings: No I have not offered to resign um-

Jason Groves: Did you ever consider it?

Cummings: No. I have not considered it. As I said, I think its reasonable to say um that other people would have behaved differently in different ways in this whole situation but as I stress I was trying to balance lots of competing things, I mean if I hadn't worked here for example then you could very easily say that okay I could have just stayed in isolated cottage for four weeks afterwards but I was involved in lots of things involving I know crucial questions of vaccines trying to get scientists involved in the effort, trying to get money moved, trying to get regulations moved out of the way and I thought, I thought that if I could return to work then I should seek to return to work and I would stress that I took expert medical advice before I moved to say you know and I actually went through the whole history, the details of what I've just told you, I went through on Saturday the 11th on day 15, sorry is that day 14 or 15 I can't remember whatever but anyway it's (journalist from crowd "day 14") day 14, so so yeah Saturday, Saturday the 11th on day 14 is when I took medical advice on day 14 of symptoms and I was told then that you're clear to, I said can I go back to work on Monday, Tuesday, and I was told yes given that what you've explained you are not a danger to the

public now and you can safely go back to work and hire childcare. So given that that I ought to go back to work and try to do what I could in this emergency.

Jason Groves: Okay, thanks.

Cummings: Um Anna Mikhailova.

Anna Mikhailova: Mr Cummings how many miles is it from your house the house you were staying in Durham and Barnard Castle where you went?

Cummings: Uh I don't know how many miles it is, its roughly a half hour drive.

Anna Mikhailova: Right, so there are people without gardens never mind access to private land or woodland who haven't made unnecessary car journeys like that for more than two months now. They've been following rules that you helped forge and create so were the public to stupid to follow these rules to the letter rather than looking for loopholes like you did?

Cummings: Um, no of course the public were not stupid to follow the rules and I wasn't looking for loopholes. I was looking to try to do the best that I could in a complex situation where I was trying to weigh safety of my child with trying to get back to work and a lot of difficult decisions to make around that.

Anna Mikhailova: How does your trip to Barnard Castle have anything to do with the safety of your child or your work.

[38:26]

Cummings: Because as I explained, I've been very ill on the Sunday the 12th, I said to my wife right let's pack up the car and go back um, I've been cleared by doctors to go back to work and she said and I think it was perfectly reasonable um a few days ago you could barely stand up, you said that your eyesight was weird and it seemed to be weird, we shouldn't just embark on a 270 whatever it is mile journey and then end up finding out halfway through that you actually can't drive that far. So you know we should get in the car and make sure, see if you can actually drive. The only way to avoid this problem would have been just to say I'm just going to stay in Durham, which I could have done but I didn't think was the right thing to do. So it was you know, one has to make the, I've been told by expert medical advice that I wasn't a danger to the public and that I could get back to work in Number 10 Downing Street on the Monday, Tuesday, and therefore I was trying to do that in the safest way possible. And I think that that was a reasonable thing to do.

Anna Mikhailova: That doesn't make any sense why do you have to make a half hour journey each way to find a castle why not drive a little bit of the way to London and then go back if you weren't feeling well.

Cummings: I mean we didn't think about that of doing that to be honest we just thought ok let's whiz down the road and see how I feel.

Anna Mikhailova: Do you regret not thinking about it?

Cummings: Um, do you mean do I regret not just trying to drive to London to see if I could do it?

Anna Mikhailova: Do you regret taking a half hour journey to Barnard Castle and sitting for 15 minutes as you say?

Cummings: As I said I think it was a reasonable thing to do, perhaps you're right we should have cracked on and tried to do the whole trip and then but, the whole point was now I had been extremely ill, my vision had been a bit weird, we were all going to go back, my wife said we should, we should drive down the road and you should see if you can actually drive and see if your vision is weird or if you're okay. And I thought that's a good idea and I should do. And as I stress, I've been

cleared to go back to work so the implication I shouldn't have been driving back to London I don't think is reasonable because I had spoken to a doctor about it and I had been cleared to come back to work.

Anna Mikhailova: You mention your wife a lot, if you and your wife felt that you had done nothing wrong why did both of your articles in The Spectator from a few weeks ago make absolutely no mention of being in Durham.

Cummings: Because as I said, my house in London was already and is now the subject of um of some very unpleasant actions and why on earth would I mention another house I was in where I've got two elderly parents and other relatives living there who now today also have a lot of unpleasant things going on around their house too. I don't think I was obliged to do that.

Anna Mikhailova: Why write such a detailed (unclear) article at all?

Cummings: My wife's a writer, I mean I don't tell her what to do.

Anna Mikhailova: You did too

Cummings: What sorry?

Anna Mikhailova: You wrote one too, you're not a writer.

Cummings: I wrote a few sentences about about her, about what it was like to be with Mary. Uh Niccola.

Nicola: Thank you Mr Cummings. You said that you sought expert medical advice before returning to London from Durham, did you seek any such advice before making the initial trip to Durham?

Cummings: Um no I didn't.

Nicola: And were you confident, or how could you be confident, that you wouldn't be putting anybody else at risk by making that trip.

[42:15]

Cummings: So the point was that I knew I could get to a place that was completely, I knew that I had a full tank of petrol and I could drive to a place where it was completely isolated from everybody else. I knew that if me and my wife could not look after our small child, I knew there was a 16, a 17 year old and a 20 year old 50 metres away that I could call and say I need help. They are old enough to look after a child and young enough to be in the least risk category. If I'd stayed in a London and a similar thing had happened, I would have had to get somebody else there and expose them to danger or invite them into the house which would also expose them to danger. The way that I did it seemed to me to be the safest thing for everybody in the circumstances and in fact as it turned out I didn't have to put anybody in that house in danger because although we were both ill and I couldn't look after a four year old, my wife could, so as I stressed I think that in all the circumstances it was the most sensible thing to do.

Nicola: You mentioned you had a full tank of petrol when you left, did you have to fill up before you came back, was that another stop that you made?

Cummings: No, I, no, we drove off and then we went back and then I'm pretty sure we called in and filled with petrol on the way back but remember at this point I'd been cleared to drive back to work so I don't think in any way that that was breaking the law.

Nicola: I think it's just important to be clear about how many stops you've made because you've disputed some of the accounts which have been reported.

Cummings: Yeah so on the way up I didn't stop at all and then on the way down I can't be entirely sure but I'm like 95% sure that I did stop on the way back down and filled up with petrol but that might be, that might be wrong.

Nicola: Right, you said in the statement you read out that you tried to exercise your judgment in doing the best thing for your family. People up and down the country have been trying to do the best for their families, you talked about complicated circumstances, so many people have those, they have competing caring needs for children, for elderly people. Most people that me and my colleagues here have spoken to did not think what you did was within the rules. Regardless of whether they had the opportunity to make such a journey, you know there are single parents who have Covid-19 who have had to care for you know, even younger children than you because that's the situation they found themselves in because they were following the advice issued from this building. How can you not feel apologetic towards them for undermining the rules you helped to create?

Cummings: Well obviously I feel extreme sympathy for single mums who have been in such a terrible situation but all I can do is repeat what I said before, on that evening my wife had just been in a situation where she felt barely able to look after our child, was essentially surrounded by people who were testing, who were either testing positive or had symptoms for Covid, it seemed perfectly likely that I would have it and could not look after a child and in fact that's exactly what happened. The next day, I was ill and I got extremely ill a couple days later and I couldn't look after a child, I could barely move to be honest and if both of us were in that situation we would have needed help and in that scenario what would have been best for everybody would it have been best for a 17 year old niece to walk 50 metres to look after our child or would it have been best for me to be here and calling 999. I think that what I did was the most reasonable thing in the circumstances given that my nieces and my sister have very kindly said that if there's an emergency we'll help.

Nicolla: Just finally before you made the decision to drive up to Durham did you make any inquiries with neighbours or friends to see if they or any other people in London who may have been able to help you should you have needed help with looking after your son.

Cummings: I didn't no, because as I said anything like that would have, doing that would have, well, first of all, I don't think it would be reasonable to ask someone, some friend to come and expose themselves to a deadly disease when a 17 year old niece has already volunteered to do it for me, so to be honest I didn't really think about that, I thought you know, I'm lucky, if this nightmare does happen then that's the best thing for everybody. Nicolla.

[47:40]

(off camera): that was Nicolla.

Cummings: Oh, sorry sorry sorry, Matt.

Matt: Hi, why weren't you honest with the public before now, before Friday about your trip to Durham.

Cummings: In what way was I not honest?

Matt: Why don't you tell us, we were asking daily at the number 10 briefing, where were you? Where were you working? A lot of people would have understood your difficulties at the time, why weren't you honest?

Cummings: Well look, there's been there's been a long string of inaccurate stories about me for month after month after month and the truth is answering a lot of these things does not necessarily clear up confusion. It frequently has led to more confusion.

Matt: So you weren't worried that you admitting being honest in public that you were travelling to Durham under very understandable circumstances could have sent out the wrong message to other families?

Cummings: Yes I was worried, I was really worried about the whole things but in the situation that you know, not just the situation in the 14 days but in the time since Friday night there are not really any good options.

Matt: Do you regret not laying out quite clearly maybe when you came back to avoid security problems, just being honest with the public?

Cummings: Yes, yeah I do, as I said I think at the beginning of the statement, I think, I think in retrospect it would have been better to set this out earlier on but you know we have to make judgements on these things. In Number 10 our judgement at the time was that if we start trying to explain everything it will actually lead to more confusion that often happens around here. But now you know there's been all these reports did I go back a second time? Did I go back on the 19th of May? Was there a third visit? Um, and by this morning there just seemed to be so much confusion on so many things that the Prime Minister and others thought okay the best thing to do now is, the only thing to do now is actually just come out and um discuss it or talk and just to lay the whole thing out including my child being ill and all that stuff.

Matt: Regardless of who's fault it is, this whole episode is already having an impact on people's behaviour, government scientists are warning more people will die, the police are warning it will make their job harder, regardless of who's fault it is why shouldn't you resign and draw a line under it and hope to regain the government's control over this pandemic?

Cummings: I hope that now that people have heard what happened, I think that as I've stressed in a very complicated situation that I behaved reasonably and I tried to do the thing which minimised risks to everybody given all the different things I had to weigh up. I hope that having heard this that

people will say okay we understand the situation and we understand why I did. They may well say I would have some people I'm sure would think I would have done this differently or that differently. Um, and you know, perhaps they're right. I'm not saying that having laid all this out I'm not saying I know I'm right I'm saying this is what I did at the time this is why I did it at the time, I was trying to weigh up competing things, I thought that I should try and come back to work and help with the whole disaster if I could do, um, other people may say that I shouldn't, that I shouldn't have done that.

Matt: So if the episode does rumble on do you think you will review your position-

Cummings: I'm sorry?

Matt: Will you review your position in a week or so if it does rumble on and it keeps distracting?

Cummings: Its up to the Prime Minister you know, I came, I'm here to try and do the best I can for the government um to try and change the country for the better in lots of ways, to get more investment into the NHS, to do all sorts of things that we've talked about. During this crisis I've been trying to do the best I can to um to make the government machine work as well as possible. If the Prime Minister thinks that I should stop that's not for me to decide its up to him to decide.

[52:13]

Matt: Very quickly, you said a lot of things you wish you'd done better yourself and as a government, what, you know, broadly, what areas do you wish you had done better over this pandemic?

Cummings: Um I think its better as I said at the start its not for me to answer all the government, all the questions of government policy over all of this, I think that's a job for the Prime Minister and he'll be giving a press conference later on or although what I would say was um you know I I know that I've made mistakes in dealing with this thing going way back to January um I think that my behaviour between in these 14 days I think when people hear everything that happened, I hope that

people will agree it was it was it was reasonable, it may not mean they might have done the same thing but I hope that people will agree that it was reasonable calculations in all the circumstances and I don't think what I did in those 14 days was a mistake but I certainly made a lot of other mistakes I make mistakes everyday. Um Caitlyn.

Caitlyn: Thank you, you've already said Mr Cummings that um there was an available empty property um at your parents' farm, it may not be a second home to which travel was explicitly banned in the regulations, but it is certainly a privileged position. Does your story not make it the case that it's one rule for most of us and another rule for everybody else who can bend it slightly because they've got the luxury of an empty house lying around?

Cummings: No as I've said I don't think that's the case. The reason why I went to that place was it seemed like the safest option given the considerations and I was weighing up what's the safest thing for my child, what's the safest thing in terms of how could I get back to work and try to help with this emergency, what's the safest thing in terms of the whole, the problems with my uh current house and I was trying to weigh all these things up and make a decision in a very short period of time.

Caitlyn: But lots of people would have liked to weigh up what the safest option was for their child and would like to have thought that they had the opportunity to go to an empty, safe space. Did you not at all have any thought that you know, I should be going through this in the same way that everybody else is? That I should be staying at home and doing everything that I can?

Cummings: Well, I mean obviously I thought well I'm not sure I could really usefully add to what I've already said, I think I've explained what my thought process was I was trying to balance these three things about the safety to my child and I stressed the point about it wasn't that it was just some nice place to be if you've been there you'll see its sort of um its sort of concrete blocks, the point of it was not that it was a nice place to be but that it was the safest place to be in the circumstances and it meant that I didn't have to expose other people to risk unless I absolutely had to in a critical emergency, and I thought that the regulations um as I stress the regulations say we are aware not all of these measures will be possible if you're living with children, and I had a wife who'd already said she was close not being able to look after a child I was thinking this might be me tomorrow, in

fact it was me tomorrow, what do I do then? And I think if you imagine what this situation if both of us had been unable to look after him, then the way that I organised it was the way in which the smallest risk to the smallest number of people was actually going on and given that and the other things I was also thinking about, I think it was a reasonable thing to do but as I stress I can understand that some people might say you know it's your own fault if people are making threats at your house, that's not a good reason to leave, we've all had to stay you know, other people are going to make their own judgements about this whole thing um. I don't think there's much more I can say.

Caitlyn: You also say, just in answering Matt's question, that you also made other mistakes um in dealing with the pandemic since January, can you point us towards any more of them?

Cummings: As I stressed I think that's I mean at some point in the future I'll be very happy to go through all the things that I think that I got wrong. Um I'd also point out though that lots of the media reports about what I've thought what I've said what I've done are completely false. For many years I've been writing about the dangers of pandemics, only last year I wrote explicitly about the danger of Coronaviruses, uh, I stressed that the importance of government planning and that I was worried that people were not taking it seriously enough and um a lot of media reports are trying to claim that I sort of brushed it off and uh and sort of didn't realise what a danger it was and I think umm no reasonable person could come to that conclusion if you look at what I've said and what I've written over the last few years, I took it extremely seriously I took it extremely seriously many years ago and I urged other people to take it extremely seriously but I have made other mistakes in terms of how I've dealt with things since January for sure.

[57:55]

Caitlyn: Is one of those mistakes the idea of herd immunity?

Cummings: No it's not and a lot of the things that have been written about that are completely are completely wrong.

Caitlyn: One final one from me, what is your message to Conservative voters who voted this government in less than six months ago a lot of them for the first time in the North East around Durham who want you out of Downing Street and want you out of this government?

Cummings: Um, what's my message to them? Well I think I've made mistakes, I've dealt with this, the uh, all sorts of things in government, I don't think I made a mistake about these 14 days that were in question and I would urge, I would stress to people they should not believe everything they read in the newspapers or everything they see on TV because lots of things that are reported are not in fact the case. I hope that I've set out today what the actual facts of it are and I hope that people will think that, even if they disagree with me, that I behaved reasonably in these circumstances. Thank you. Anybody else like to ask any questions? Sure thing Anna.

Anna: (Very hard to hear) Just going back to what you said about Barnard Castle, what guidance in the rulebook in the guidelines does it say its ok to make a practice drive journey and then head out to (inaudible)

Cummings: Well um, after recovering from this um disease, uh, my job is one of the jobs where the rules say you should go back to work if you can do.

Anna: (inaudible) *something about practicing driving*

Cummings: Well with respect, I think its very relevant because I was allowed to drive back to London and go back to work so.

Anna: This isn't about your drive to London, you said you tested your vision (inaudible) which sounds reasonable, then you went, you didn't just go for a drive or a test, you went to a beautiful nature spot and sat outside (inaudible)

Cummings: To be honest the state that everyone was in this has nothing to do with a beauty spot and contrary to lots of the reports I wasn't sightseeing I didn't go to the castle, I wasn't walking around, um there are a lot of things that have been said about this which are simply not true. We just went for a test drive drove East, East? South, um and ended up pulling in by the side of the road by a river on the outskirts of town. And my wife and I Discussed it and said okay you can drive this feels safe, let's go back and tomorrow we'll pack the car up and go back to work. As I say I was entitled to go back to work , I was encouraged to go back to work and I think going back to work was the right thing for me to do but I think its also reasonable to try and do it safely for me, the family that I'm driving and everybody else on the road as well. Robert.

Robert: (Hard to hear) This is not about legality this is about the extent to which you can exercise personal judgement (inaudible) If you feel there are certain (inaudible) ...so for example quite soon, many of us are going to be getting a telephone call from a contact tracer saying you have been in contact with somebody who's got symptoms, stay at home for 14 days and many people say ah I'm absolutely certain I haven't got any symptoms, if I don't go to work I won't be able to earn any money (inaudible)... I'm just going to go with my own judgement on this. Lots of people will do that, contact tracing is not going to stop the spread of the virus.

[1:02:34]

Cummings: So yes its true that various scientists have said oh well we think what Mr Cummings did might cause problems but I would stress that a lot of the things which they think I did I did not do. There have been, (inaudible comment off screen) Yes but with great respect for that you are allowed to exercise judgement. The rules explicitly say that as I've stressed to you before. The rules explicitly say that when you're living with small children you have to exercise your judgment in that situation is what the rules say. The rules are not millions of pages long explaining exactly what you do in every possible circumstance and if we try to write rules like that then they could easily cause more trouble rather than less trouble, so of course people have to make judgements about these things um you know some of the people who've said that I did is encouraging people to behave badly are doing so thinking that as per various media reports that I went to stay with my parents. I did not in any meaningful sense stay with my parents, I was not in the same house with my parents I never went in the same house as my parents. Its not true to say I went to visit with my parents, its not true to say

that my parents helped me with childcare, all of these things have been reported, that is not the case, that is not what happened.

Robert: (inaudible comment)

Cummings: With respect that situation does not apply to me and that's not what I was saying.

Robert: It doesn't apply to you but what I'm saying is the moment you introduce an element of 'I've got to protect my family', the risks become that less clear and obvious.

Cummings: That is stressful but with great respect I am not introducing an element of discretion or judgement, the rules necessitate that you exercise judgement. If you look at the actual official rules on the NHS website, you can't do anything but exercise judgement in circumstances with a small child it doesn't go into lots of different circumstances and what to do, there is no regulation covering the situation that I found myself in on Friday night. I had to exercise judgement about what to do weighing up all these different things. Okay, thank you very much everybody, take care.