

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

Claim No CO/3385/2019

BETWEEN:

THE QUEEN on the application of GINA MILLER

Claimant

And

THE PRIME MINISTER

Defendant

And

THE RT HON SIR JOHN MAJOR KG CH

Proposed Intervener

WITNESS STATEMENT OF THE RIGHT HONOURABLE SIR JOHN MAJOR KG CH

**I, The Right Honourable Sir John Major KG CH of [REDACTED],
SAY AS FOLLOWS:**

1. I have applied to intervene in the above proceedings and make this statement with a view to assisting the Court in relation to matters which I believe to be in issue in these proceedings.
2. Save where I say otherwise, the matters set out in this witness statement are within my own knowledge and are true. Where I refer to matters that are not within my own knowledge, they are derived from the sources stated and are true to the best of my knowledge and belief.
3. I enclose an exhibit which includes the key documents to which I refer in this statement. When I refer to this exhibit I do so in the format: **[JM-1/page number]**. I have also referred to certain exhibits from Mrs Gina Miller's statement in the same format.

The reason I have joined these proceedings

4. I believe that the idea of proroguing Parliament to help push through a no-deal Brexit was first posited during the Conservative Party leadership campaign in June/July 2019. I have opposed this potential course of action since it was first put forward as a possibility. Parliament's primary roles are to represent and safeguard the collective and individual rights of the citizens of the UK and to hold the Government to account. When the Government prorogues Parliament it closes down both Houses, and no Parliamentary business can be discussed or legislation considered (see further paragraph 11 below) during the period of prorogation, thus leaving Members of Parliament ("**MPs**") incapable of protecting those individuals and the Government free of Parliamentary scrutiny. This is all the more concerning in the currently proposed prorogation as it has taken place, or will do so, at a time of crucial national importance. I know from discussions I have had with a large number of people that many feel disenfranchised by recent Government activity and these actions have served only to exacerbate those feelings.
5. It is in my view utterly unacceptable for the Government to seek to bypass Parliament because it does not agree with the Government's proposed course of action on a certain policy. I served in Parliament for over 20 years both as a backbench MP and as a Government Minister at Cabinet and more junior levels. I was of course Prime Minister for nearly 7 years and am very proud to have been in the Commons and a Minister. I have huge admiration for our Parliament and am a keen supporter of its rights and duties. I cannot stand idly by and watch them set aside in this fashion. I appreciate that this is not the Government's stated intention for proroguing Parliament, but for the reasons set out in this statement, the inescapable inference to be drawn is that the prorogation is to prevent Parliament from exercising its right to disagree with the Government and to legislate as it sees fit.

My background

6. I joined the Conservative Party on my sixteenth birthday and first entered elective politics at the age of 21 when I became a councillor on Lambeth Borough Council in 1968.
7. I became the MP for Huntingdonshire (the constituency was later renamed Huntingdon) in 1979. I was appointed a Parliamentary Private Secretary in January 1981, and went on to become an assistant government whip in 1983. In 1985 I was made Under Secretary of State for Social Security before being promoted to become Minister of State in the same department in September 1986. I was promoted to the Cabinet in 1987 when I was made Chief Secretary to the Treasury, going on to be appointed Foreign Secretary and then Chancellor of the Exchequer. From 1990 to 1997 I served as Prime Minister. I continued as an MP until my resignation in 2001.
8. I believe that my experience as an MP, a Minister and Prime Minister makes me uniquely qualified in the context of these proceedings to assist the Court.

Prorogation of Parliament

9. Prorogation is a prerogative power exercised by Her Majesty The Queen on advice from the Privy Council. The decision to seek prorogation is made by the Prime Minister as The Queen's First Minister, as Head of her Government and in his or her role as a Privy Counsellor, usually after discussion with the Government Business Managers (the Chief Whip and the Leader of the House of Commons) and, most probably, other senior colleagues. The Prime Minister would usually then advise the

Cabinet of the decision and seek an Audience of Her Majesty The Queen for approval to prorogue. In practice, The Queen is bound to agree.

10. The Prime Minister would provide Her Majesty with his or her reasons for the prorogation and is responsible for advising The Queen to make the necessary Order in Council. Any further advice about prorogation would come to The Queen from her Private Secretary who would wish to ensure Her Majesty was not drawn into political controversy. In my experience, prorogation is usually a routine matter.
11. As explained in the House of Commons Library Briefing Paper on the Prorogation of Parliament dated 11 June 2019 [GM-1/120], when Parliament is prorogued, "*MPs and Peers cannot formally debate government policy and legislation, submit parliamentary questions for response by government departments, scrutinise government activity through parliamentary activity or introduce legislation of their own*".¹ Any uncompleted primary legislation will fall at the date of prorogation unless Parliament explicitly agrees to carry it over to the next session. Consideration of secondary legislation is merely suspended during the period in question but does not fall. Select Committee inquiries can continue although the committees cannot meet during the period of prorogation.
12. It is important to distinguish between prorogation, adjournment, recess and dissolution of Parliament. I exhibit to this statement information from the Institute for Government's website which clearly sets out the differences [JM-1/1]. In summary:
 - a. A Parliament is a period of time during which the institution of Parliament (the House of Lords and the House of Commons) exercises its powers. Parliament begins with the formation of a new Parliament after a general election. It has a maximum lifespan of five years. That (often but not always) five year Parliament is divided into a number of usually 12 month sessions. Prorogation marks the end of a Parliamentary session and, as mentioned above, brings nearly all Parliamentary business to a close. When Parliament reconvenes, a new session begins with the opening of Parliament by The Queen and her making The Queen's Speech written by the Government. Parliament cannot reconvene prior to the end of the prorogation period other than in limited circumstances and only where a proclamation is made by The Queen under the Meeting of Parliament Act 1797.
 - b. Adjournments are simply breaks in Parliamentary activity; Parliament will adjourn at the end of the day or over the weekend. Normal Parliamentary business will be not be affected by an adjournment.
 - c. Recesses are effectively longer forms of an adjournment during which Parliament does not meet. MPs vote to approve recess dates. Although MPs do not meet during recesses other Parliamentary business can continue. It is also possible to recall Parliament should there be any urgent issues to discuss, as happened in the summer recess in 1992 at the time of the UK's departure from the Exchange Rate Mechanism when I was Prime Minister and in the summer recess of 2013 to discuss military action in Syria when David Cameron was Prime Minister.
 - d. Dissolution brings Parliament to a close prior to a general election. When Parliament is dissolved, all Parliamentary business comes to close.

¹ Although this Briefing Paper states that the prorogation in 1997 caused the delayed publication of the Downey Report into "cash for questions" that is not the case. I deal with this further at paragraphs 15 to 17 below.

13. There are no set rules for the length of prorogation but the usual length of time is less than a week. Parliament is usually prorogued for a short period of time between Parliamentary sessions or before Parliament is dissolved for a general election to take place.
14. I have noted that recently there has been a significant amount of comment in the media about my decision to prorogue Parliament for 17 days in 1997. The allegations raised by the Labour and Liberal Democrat Parties at the time were that I called an early election and prorogued Parliament to avoid the publication of Sir Gordon Downey's report into "cash for questions" (the "**Report**"). This is incorrect. For the avoidance of doubt, the Report was under the purview of the Committee on Standards and Privileges and not the Government. The Government had no control over its timetable and was not aware of the substance of the Report.
15. The announcement for the general election was made on 17 March 1997, which was 19 days before the last possible date for doing so.² Parliament was prorogued on 21 March 1997. For the reasons set out below, the Report was not ready at this point and would not have been ready during the 25 day period prior to the dissolution of Parliament or indeed, if I had delayed the announcement of the election by a further 19 days:
 - a) Even though the investigation into the Report was initiated in October 1996, the inquiries into the Report did not get fully underway until 1997.³
 - b) The Report dealt with allegations against a total of 25 MPs.⁴ I understand that 10 of those MPs were eventually criticised. Those MPs needed to be given the opportunity to respond prior to the publication of the Report. This would have been a lengthy process.
 - c) Evidence was still being received in early March 1997.⁵
 - d) An interim report was published on 19 March 1997 which indicates that a final report was not ready. Sir Gordon noted at paragraph 7 of the Report that, "*[a]s indicated in my interim report to the Select Committee of 19 March 1997, the inquiry has been a detailed and complex one. Over 60 witnesses provided evidence, 13 oral hearings were held and some 14,000 pages of documents were examined.*" [JM-1/6]
 - e) As mentioned above, the proroguing of Parliament does not prevent Select Committees or certain other Parliamentary work, such as that of Sir Gordon Downey's Parliamentary Commissioner's Office, from continuing their inquiries, therefore Sir Gordon would have been able to continue working on the Report during the period of prorogation. There is a difference between the Committee on Standards which is made up of MPs and the Commissioner's Office which is made up of officials, the chief of which in that office was Sir Gordon.

² I note that the announcement for the election was made close to the latest possible date for doing so, for which I was criticised by the Labour party, however I then went on to be criticised for calling the election early to avoid the publication of the Report.

³ Report, paragraph 5 states "*Because we were concurrently engaged on the lengthy investigation of allegations against Mr Michael Howard, this inquiry did not get fully under way until early 1997 (although part of the period leading up to then was taken up with the process of collating the necessary documentation).*" [JM-1/6]

⁴ Report, paragraph 6 [JM-1/6].

⁵ Report, paragraph 65 states "*I also obtained a large number of accounting documents from Peter Carter-Ruck and Partners, Mr Greer's solicitors before the collapse of the libel action. In fact documents were still being received from this source in early March 1997.*" [JM-1/7]

- f) As explained by Lord Heseltine in his letter to the Times dated 31 August 2019 "*The report over which the government had no control, was not completed and published until July 3, well after prorogation and dissolution, and a full two months after the new Labour government took office*" [JM-1/8]. Had the Report been even close to being finalised in March, then it would have been published as soon as Parliament reconvened. It was not. This is supported by the Minutes of the Committee on Standards and Privileges dated 2 July 1997, which state: "*The Committee today received a memorandum from the Parliamentary Commissioner for Standards containing his final report on these allegations which relates to twenty-five Members of the previous Parliament. That report and the appendices thereto are published in this and two subsequent volumes*" [JM-1/10]. If the Committee did not receive the Report until 2 July, it was certainly not ready in March when I called the election.
16. In summary, this shows that the Government did not and, could not, have delayed the timing of the Report.
17. As Lord Heseltine explained in his letter to the Times of 31 August 2019, "The reason for the 17 days' prorogation (which was far shorter than the prorogation that the government has introduced) was that Easter that year immediately preceded the latest date for the dissolution of parliament. Parliament would not have been sitting over that period anyway, and prorogation just in advance of Easter allowed MPs to get back to their constituencies and launch their election campaigns." [JM-1/8] Indeed, Parliament was prorogued on 21 March and the Easter break commenced on 27 March 1997.⁶ It would therefore have made little sense to require Parliament to return for the short intervening period following the Easter break and prior to being dissolved for the general election. I note for completeness that Parliament was formally dissolved on 8 April 1997.

The Government's stated reasons for proroguing Parliament

18. I exhibit to this statement Mr Johnson's letters to MPs setting out his reasons for proroguing Parliament for five weeks [JM-1/11 - 13]. In summary, the Government has said that it wishes to prorogue Parliament because:
- a. The current session has lasted more than 340 days which is the longest session in nearly 400 years;
 - b. Bills have been introduced merely to fill time in both houses whilst key Brexit legislation has been held back to ensure it could still be considered for carry-over into a second session; and
 - c. The Government intends to bring forward a bold and ambitious domestic legislative agenda which will help the NHS, fight violent crime, invest in infrastructure and science and cut the cost of living.
19. All of these reasons are acceptable for proroguing Parliament, but none of them explain why the Government intends to prorogue Parliament for as long as five weeks.
20. Points (a) and (b) only require a short prorogation to end one session and commence the next. For the reasons stated in paragraph 37 below, however, I believe that Parliament is not short of things to do and it is not true to say that it does not currently have important bills to discuss.

⁶ As mentioned in paragraph 13 above, it is normal to have a period of prorogation prior to the dissolution of Parliament before a General Election.

21. With respect to point (c), the Government appears to be arguing that it needs time to create this bold new agenda which it will be announcing in The Queen's Speech. I do not accept that five weeks is required for this. By way of background, the purpose of The Queen's Speech is to set out the proposed legislative programme for the next session of Parliament. Not all of the legislation is inevitably introduced in Parliament and further legislation can be introduced (and often is) as the Government sees fit, even it has not been referred to in The Queen's Speech. The expression "*Other measures will be laid before you*" is often used to cover that.

The length of time needed to draft the Queen's speech

22. The work on The Queen's Speech varies according to the size of the programme. However, a typical time is four to six days. The Bills themselves are not drafted at this stage. Departments bid for Bills to go into the programme detailing in their bid only the objective or general policy thrust of the Bill. The Business Managers then meet and select the Bills to be included in the programme usually after discussion with the Prime Minister and then the Cabinet would be asked to endorse the decision. The drafting of The Queen's Speech itself is not a lengthy process, and would be undertaken once the substance of the speech had become clear.
23. The letter seems to suggest that the Government is only just starting to consider its forthcoming legislative agenda. That cannot be right. Much of the legislation is likely to be Brexit related. Unless the Civil Service and in particular the Department for Exiting the European Union is unaccountably lax, legislation will have been in preparation for some time. Moreover, before the final round of the leadership contest, both Mr Johnson and Mr Hunt met the Cabinet Secretary, who would have asked them for their respective legislative priorities. Preparatory work by the Civil Service on wider issues may have started at that stage, but work on them would certainly have started in earnest as soon as Mr Johnson became Prime Minister. Furthermore, whenever he made a policy proposal, civil servants would have heard about it, some of them at a senior level in advance, and would have been expected to have begun work on it. It is therefore highly likely that they would have been working on a programme since the end of July. In my over twenty years of experience as a Minister and MP, I have never known a Government to need as much as 5 weeks to put together its legislative agenda, assuming that this is what is genuinely being suggested as the reason for the length of this prorogation.

The circumstances in which the speech can be drafted

24. In any event, Parliament does not need to be prorogued to select the programme for The Queen's Speech or to write the speech. It can be done while Parliament is in session or during a recess.
25. I believe that the Government has been arguing that Parliament would not have been sitting for three of the five weeks of the prorogation period, due to the party conference season. Whilst this is true, the Government usually calls for a recess so that MPs can attend party conferences rather than prorogue Parliament. As explained above, MPs are in control of when to call a recess and during a recess, Parliament can be recalled to discuss any urgent issues. The Queen's Speech could easily have been drafted during the party conference recess (during which time it could be recalled in an emergency) and Parliament need only have been prorogued for a short time in order formally to end the session and begin a new one.

Other reasons the Government may have had for proroguing parliament

26. For the reasons set out in paragraphs 18 to 25 above, the Government has failed adequately to explain why it has prorogued Parliament for such an extended period.

Yet there must be a reason for the five week timeframe, as the Observer reported on 24 August 2019 that the Prime Minister had sought guidance from the Attorney General on the lawfulness of a five week prorogation beginning on 9 September 2019 [GM-1/43-46]. I note that this advice was sought prior to an interview of the Secretary of State for Digital, Culture, Media and Sport on the Today Programme on 27 August 2019, in which she said that "*Downing Street has made it very clear that claims of any sort of prorogation in September are utterly false*".⁷

27. Comments made by Conservative party backbench MPs, Government Cabinet Ministers and Government advisers both before and after the announcement of the prorogation call into question the prima facie reasoning provided by the Government.
28. During the Conservative Party leadership campaign the suggestion of proroguing Parliament was, from what I have seen, raised exclusively in the context of achieving a no deal Brexit. In the first televised debate Dominic Raab said he would not rule out proroguing Parliament in order to guarantee that the UK leaves the European Union ("EU") on 31 October 2019 [GM-1/-1 - 8]. Mr Johnson then refused to rule out suspending Parliament to secure a no deal Brexit [GM-1/33 - 35].
29. In paragraph 13 of her first witness statement, Mrs Miller has included and exhibited a list of articles in which the Prime Minister sets out his intention to leave the EU on 31 October 2019 with or without a deal. This is despite the fact that, as Mrs Miller has pointed out, it is the clear will of Parliament that the UK should not leave the EU without a deal. I believe that if Parliament was in session for the full period in the lead up to 31 October 2019 then it would not be possible for the Government to pursue the option of a no deal Brexit and clearly not without the consent of Parliament.
30. Indeed, this appears to have been the view of the Defence Secretary, Ben Wallace, who was filmed saying on 29 August 2019 that the Government had prorogued Parliament because it did not have a majority [JM-1/14 - 15]. More specifically, Mr Wallace said:

"Parliament has been very good at saying what it doesn't want...But it has been awful at saying what it does want, that's the reality...So you know, eventually any leader has to, you know, try...I don't know what the outcome of it... You know...politics.

Our system is a winner takes all system...If you win a parliamentary majority, you control everything. You control the timetable. There's no written separation.

And we've suddenly found ourselves with no majority and a coalition, and that's not easy for our system".
31. Whilst a spokesman for the Prime Minister's office was quick to say that Mr Wallace had "misspoken" [JM-1/15] and to suggest that he was not part of the discussions regarding prorogation, good practice suggests that Cabinet Ministers are informed formally or informally of the Prime Minister's decision to prorogue and of the underlying reasons for doing so before the Prime Minister approaches The Queen. It would be surprising if a Minister as senior as the Defence Secretary was not privy to any of the discussions in this regard.

⁷ <https://www.bbc.co.uk/sounds/play/m0007wtv> 1:14:25; see also comments made by the Prime Minister's press office at [JM-1/16]. I appreciate that these comments may have been made in the context of the Government proroguing Parliament to stop the Brexit debate when in fact, it was considering proroguing for other reasons, however they are at best misleading.

32. Furthermore, prior to her appointment as the Director of Legislative Affairs for the current Government, Nikki da Costa wrote an article for the Spectator on 29 June 2019 regarding whether Parliament would be able to stop the Government from leaving without a deal. In this article she noted that MPs "*could try to legislate... With this Speaker, MPs have a wealth of options to prevent no deal, while the government is relatively limited. The clock will however be on the government's side – if the next prime minister can head to the next EU Council summit on 17 October with his hands unbound, we may finally have the conditions for negotiations to shift.*" [JM-1/18]
33. This helps to explain the Government's decision to prorogue Parliament until 14 October 2019 and the following comments made by the Prime Minister in a BBC interview in response to a question on prorogation: "*We want to do a deal... Everybody can see the rough shape of what needs to be done... The best way to do that is if our friends and partners over the channel don't think that Brexit can be somehow blocked by Parliament. As long as they think in the EU that Parliament might try to block Brexit, or might even succeed in blocking Brexit, the less likely they are to give us the deal we want.*" [JM-1/19 - 22]
34. As a result of the prorogation, there would only be seven to nine sitting days before the EU Council is due to meet on 17 and 18 October, which will make it very difficult for Parliament to pass any legislation which might influence Mr Johnson's negotiations. Furthermore, there is normally a five day general debate, divided into subjects, on The Queen's Speech during which there is no time for debates on other matters such as legislation so effectively this is, although sitting time, non-legislative time than can only be "recovered" if the Government cuts short The Queen's Speech Debate or the House of Commons captures the timetable and sets the agenda. Accordingly, if Parliament is reconvened on Monday 14 October and The Queen's Speech Debate lasts five days that will take up all of that week till Friday 18 October if it sits on that Friday or until Monday, 21 October if there is no Friday sitting.
35. It is therefore difficult not to infer that the prorogation is intended to facilitate a no-deal Brexit. The Institute of Government's report entitled "Voting on Brexit: Parliament's role before 31 October" which is exhibited to Mrs Miller's statement at [GM-1/9 - 30] notes that if Parliament recessed for party conference season it would only have 22 sitting days and even if that recess was cancelled it would still be under two months until the Brexit deadline. The report states that:
- "This means that the government would have little time to renegotiate a deal, secure parliamentary approval for it and then pass legislation for its implementation through both the Commons and the Lords before 31 October...*
- The tight timetable also means that if MPs do want to force the PM into a different approach, there will be very little time for them to do so. When MPs tried to take control of the Commons order paper earlier this year, they needed multiple attempts. The first was on 29 January, but they were only successful on 25 March. As the no-deal deadline got closer, MPs were more willing to take more drastic steps. The same may happen again – but given the limited opportunities they now face, a delay of that magnitude would be likely to scupper their efforts."*
36. As a result of the prorogation, Parliament will only be sitting for approximately 17 to 19 days (of which five days will be spent debating The Queen's Speech) prior to 31 October with 12 of those days falling after Parliament has reconvened. This is even less time than that envisaged in the Institute for Government's report, which only serves to reinforce the unlikelihood of the UK leaving the EU with a deal on 31 October.

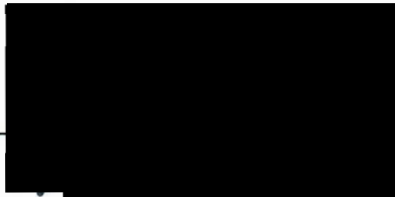
Impact that proroguing Parliament will have

37. Although the Government has said that it has run out of bills to debate this is not the case. There are approximately 17 Bills that could be brought before the House. They include Bills on immigration, trade, fisheries, agriculture and financial services. These bills do not have to be debated before Brexit, but they could be. So Parliament is not without possible business.
38. Furthermore, the prorogation is due to take effect during a period of particular political, legal and constitutional importance during which Parliament may well wish to legislate. As mentioned in paragraphs 34 to 36 above, even without prorogation, there is limited time for Parliament to debate significant issues in relation to Brexit. There is still ample legislation for Parliament to debate before it comes to a resolution on a no deal Brexit or one with an agreement. At the very least Parliament would need to do the following depending on the two outcomes:
- a) If a deal were to emerge, then Parliament would have to pass a Bill to give effect to the deal. I assume this would incorporate the changes to “the backstop” and the bulk of the existing Withdrawal Act. It is clear the content of any deal reached by the Prime Minister would be controversial in parts of the House and may not be able to pass at speed – or even at all.
- b) If there is “no deal”, then there would still be legislation which needs to be passed. A responsible Government would need to take direct rule powers in Northern Ireland to make decisions: as Michael Gove said (Hansard 13 March 2019):
- "If the House voted for “no deal” we would have to start formal engagement with the Irish Government about further arrangements for providing strengthened decision-making ...that would include the real possibility of imposing a form of direct rule." [JM-1/25]*
- Similarly David Lidington (10 July 2019) at the Select Committee for Exiting the EU:
- "In the event of a “no deal” Brexit, decisions would need to be taken very rapidly ... without new Parliamentary legislation, no Secretary of State or Minister in Northern Ireland could direct the Northern Ireland Civil Service." [JM-1/27 - 28]*
39. Given that in reality an agreement to exit the EU either with or without a deal will most probably be completed within the European Council on 17 and 18 October, it is highly likely to be difficult if not impossible for Parliament to properly scrutinise the necessary consequential legislation in either eventuality before 31 October.
40. Another worrying point is that at a time of crucial national importance, the Government should not remain unscrutinised by and unaccountable to Parliament, and yet in addition to the Chambers of each House being unavailable to their members, the Select Committees of each House will also be unable to call ministers and civil servants before them during the prorogation (which they can do in a recess).
41. Essentially, the protection of individual rights afforded by Parliament is being compromised. In order to allegedly protect the democratic outcome of the referendum, the Government believes it is justified in suspending the UK's democratic processes to achieve its desired ends. This is unacceptable and is the reason I was determined to assist in these proceedings.

42. As I said in my interview with BBC Radio 4's Today Programme on 10 July 2019 "I have been in the Conservative Party for sixty years, I joined on my sixteenth birthday. But I'll tell you this without any equivocation. If you have to choose between what is in the interests of the country and its future or the short-term interests of the Conservative Party, then I would unhesitatingly choose the interests of the country as a whole." [JM-1/35]

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: _____


Dated: _____


Witness statement
The Rt Hon Sir John Major
First
Exhibit JM-1
2 September 2019

Claim No: CO/3385/2019

**THE QUEEN
ON THE APPLICATION OF
GINA MILLER**

- and -

THE PRIME MINISTER

- and -

**THE RT HON SIR JOHN
MAJOR KG CH**

**WITNESS STATEMENT OF
THE RIGHT HONOURABLE SIR JOHN
MAJOR**

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