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## ARTICLE

## Undermining loyalty to legality? An empirical analysis of perceptions of ‘lockdown’ law and guidance during COVID-19

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This article substantially extends the existing constitutional and legal critiques of the use of soft law public health guidance in the UK during the COVID-19 pandemic. Drawing upon the findings of a national survey undertaken during the first wave of the pandemic in June 2020, it shows how the perceived legal status of lockdown rules made a significant difference as to whether the UK public complied with them and that this effect is a product of the legitimacy that law itself enjoys within UK society. Based on this analysis, it argues that the problems with the Government’s approach to guidance, that have been subjected to criticism in constitutional and legal terms, may also be open to critique on the basis that they risk undermining the public’s loyalty to the law itself.

## INTRODUCTION

During the COVID-19 pandemic, governments around the world restricted the everyday behaviours of their populations.<sup>1</sup> In the UK, some of the rules restricting behaviour were given the force of law. Other rules were not: they were placed in ‘guidance’ (a form of soft law). This is not surprising: soft law is ubiquitous as a modern governing technique,<sup>2</sup> and it was a natural component of a mode of ‘virus governance’ in the UK that saw a ‘concentration of

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1 T. Hale, N. Angrist, E. Cameron-Blake et al, ‘Variation in government responses to COVID-19’ Blavatnik School of Government Working Paper 2020: Version 7 at <https://www.bsg.ox.ac.uk/research/publications/variation-government-responses-covid-19> (last accessed 10 May 2021).

2 R. Rawlings, ‘Soft Law Never Dies’ in M. Elliott and D. Feldman (eds), *The Cambridge Companion to Public Law* (Cambridge: Cambridge University Press, 2015).

power in the executive'.<sup>3</sup> However, the manner of executive's use of guidance to regulate public behaviour during the pandemic drew extensive criticism. Tom Hickman QC, one of the most vocal critics, argues there was a 'fusion of criminal law and public health advice' that led to a '*sui generis* form of regulatory intervention that sits outside the regime of emergency governance established by Parliament'.<sup>4</sup> This approach to guidance, he suggests, 'failed to conform to basic principles of transparency and clarity'.<sup>5</sup> At the same time, there was concern that the likely result was public misunderstanding of the legal status of the rules and this risked limiting the perceived scope of individual liberty without any legal basis for such restriction. Such concerns are echoed by others,<sup>6</sup> and the House of Lords Constitution Committee also effectively endorsed this view. In particular, the Committee's Report on *COVID-19 and the use and scrutiny of emergency powers* drew attention to how guidance 'failed to set out the law clearly, misstated the law or laid claim to legal requirements that did not exist', pointing to examples where government publications and statements did not distinguish between public health advice and legal requirements, where public health advice was incorrectly enforced by the police as though it were law, and where public authorities tasked with enforcing the COVID-19 restrictions misstated, or incorrectly suggested that guidance had the force of law.<sup>7</sup> The report on *Rule of Law Themes from COVID-19 Regulations* by the Joint Committee on Statutory Instruments similarly expressed dismay that 'guidance has been used in the context of the pandemic response in a way that appears to attempt to impose more severe restrictions than are imposed by law' and that there was an apparent 'practice of attempting to rely on guidance to tighten up wording that is insufficiently clear in the legislation itself'.<sup>8</sup>

In this article, we seek to substantially extend the existing critiques of the use of soft law guidance during the pandemic through reporting the findings of an empirical study that explored the legal dimensions of people's responses to public health restrictions.<sup>9</sup> Our central finding, based on a national survey undertaken during the first wave of the pandemic, is that the perceived legal status of lockdown rules – ie ordinary people's beliefs about whether they were placed in law or guidance – made a significant difference as to whether the UK

3 R. Thomas, 'Virus Governance in the United Kingdom' in M.C. Kettmann and K. Lachmayer (eds), *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Oxford: Hart Bloomsbury, 2022) 71.

4 T. Hickman, 'The Use and Misuse of Guidance during the UK's Coronavirus Lockdown' 2020 at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3686857](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686857) (last accessed 25 January 2022).

5 *ibid.*

6 For instance, see J. Sorabji and S. Vaughan, "'This Is Not A Rule": COVID-19 in England & Wales and Criminal Justice Governance via Guidance' (2021) 12 *European Journal of Risk Regulation* 143.

7 House of Lords Select Committee on the Constitution, *COVID-19 and the use and scrutiny of emergency powers* 3rd Report of Session 2021–22 HL 15 (2021).

8 Joint Committee on Statutory Instruments, *Rule of Law Themes from COVID-19 Regulations* First Special Report of Session 2021–22 HL 57, HC 600 (2021) 13–17.

9 Empirical analysis is a recognised gap in the soft law literature both generally and in relation to COVID-19. See M. Eliantonio, E. Korkea-Aho and S. Vaughan, 'COVID-19 and Soft Law: Is Soft Law Pandemic-Proof?' (2021) 12 *European Journal of Risk Regulation* 1, 6. See also M. Eliantonio, E. Korkea-aho and O. Stefan (eds), *EU Soft Law in the Member States: Theoretical Findings and Empirical Evidence* (Oxford: Hart Bloomsbury, 2021).

public complied with them. This effect, we argue, is a product of the legitimacy that law itself enjoys within UK society. Our argument is therefore not one about whether or when soft law should or should not be used. Rather it is one about the importance of clarity and transparency in how soft law is used and about how failure to have honest conversations with the public about its use risks undermining fidelity to the law being used as a key regulatory tool for the shaping of public behaviour during a time of national crisis.

We make this argument in four parts. First, we introduce the legal context of lockdown, locating the role of guidance alongside primary legislation and delegated legislation. Second, we introduce the study on which our analysis is based and present some descriptive statistics that demonstrate that the UK population as a whole was rather confused about the legal status of the behavioural restrictions with which they were urged to comply in the first wave of the pandemic. Third, we describe the research approach adopted in the project, and present our findings in relation to whether perceptions of the legal status of rules mattered for compliance with them. Fourth, we elaborate why the problems with the use of soft law guidance during the pandemic, that have been subjected to sustained criticism in constitutional and legal terms, may also be open to critique on the basis that they risk undermining the public's loyalty to law itself.

## LOCKDOWN LAW AND GUIDANCE

In the early months of 2020, the UK was coming to terms with the grave public health threat posed by COVID-19. By the beginning of March, in an attempt to avoid hundreds of thousands of deaths and the National Health Service becoming overwhelmed, it was clear that some form of national lockdown would be imposed.<sup>10</sup> By the end of March, the entire population was living under arguably the most stringent restrictions on freedom in UK history. In this section, we introduce the development of legislation and guidance in response to the onset of the pandemic.

### Lockdown law

To put the policy of 'lockdown' into effect, the legislative system sprang into action to adjust and create legal frameworks to respond to the crisis and facilitate public health measures. In terms of primary legislation, the centrepiece was the 342-page Coronavirus Act 2020. The Act's stated purpose was to implement the UK Government's *Coronavirus: Action Plan* to 'contain, delay, research, and mitigate', though the Act ultimately survived multiple government strategic plans for the management of COVID-19.<sup>11</sup> The Act represented a sweeping

<sup>10</sup> For an excellent overview and analysis of the government's strategy at this stage, see: L. Freedman, 'Strategy for a Pandemic: The UK and COVID-19' (2020) 62 *Survival* 25.

<sup>11</sup> UK Government, *Coronavirus (COVID-19) action plan* (3 March 2020).

departure from the *status quo* in many areas of governmental activity, covering issues as diverse as healthcare professional registration, food supply chains, data collection, death certification and inquests, justice processes, and elections. Criticism of the Act has generally centred on two interwoven concerns: first, that the Act was essentially the product of an unnecessary governmental ‘regression to panic’, with well-established legal frameworks to respond to emergencies – most notably the Civil Contingencies Act 2004 – being unnecessarily marginalised;<sup>12</sup> second, that the Act received insufficient scrutiny. It received only one day’s worth of parliamentary scrutiny time. After its enactment, there were only weak controls on its operation: a requirement that the Secretary of State publish every two months a report on the status of the provisions;<sup>13</sup> a debate every six months in the House of Commons on the continuation of the Act;<sup>14</sup> and a sunset clause after two years<sup>15</sup> (which a ‘relevant national authority’ could also extend by regulation for six months).<sup>16</sup> This level of scrutiny was much weaker than would have occurred had the government opted to use existing frameworks.

The Coronavirus Act itself did not provide powers to implement a policy of a public lockdown. In England and Wales, for example, existing delegated powers under the Public Health (Control of Disease) Act 1984 were used.<sup>17</sup> This Act includes powers under sections 45C(1), (3)(c), (4)(d), 45F(2) and 45P that authorise government bodies to make regulations to protect against infectious disease. It is through these powers that lockdown was implemented in law, through delegated legislation.<sup>18</sup> These regulations drew criticism from constitutional lawyers on two main fronts. First, some argued that lockdown rules were *ultra vires* the Public Health Act.<sup>19</sup> A legal challenge to the regulations ultimately failed, but it was clear this use of the Act was not without some degree of legal risk.<sup>20</sup> Second, and much more widely, the regulations were criticised on the basis that they received insufficient scrutiny in Parliament.<sup>21</sup> As is usual in Parliament, delegated legislation was where the bulk of the legislative activity relating to the pandemic occurred – within one year of the first lockdown

12 For an account of this legislative choice, see R. Moosavian, C. Walker and A. Blick, ‘Coronavirus legislative responses in the UK: regression to panic and disdain of constitutionalism’ (2021) 72 *Northern Ireland Legal Quarterly* 1. On the context of civil contingences legislation, see: C. Walker and J. Broderick, *The Civil Contingencies Act 2004: Risk, Resilience and the Law in the United Kingdom* (Oxford: OUP, 2006); C. Walker (ed), *Contingencies, Resilience and Legal Constitutionalism* (Abingdon: Routledge, 2015). See also A. Greene, *Emergency Powers in a Time of Pandemic* (Bristol: Bristol University Press, 2020).

13 Coronavirus Act 2020, s 97.

14 Coronavirus Act 2020, s 98.

15 Coronavirus Act 2020, s 89.

16 Coronavirus Act 2020, s 90.

17 The relevant Act for Scotland was the Public Health (Scotland) Act 2008. For Northern Ireland, it was the Public Health Act (Northern Ireland) 1967.

18 See for example Health Protection (Coronavirus, Restrictions) (England) Regulations (2020 SI 2020/35). These regulations were repeatedly changed and supplemented with other restrictive measures throughout the pandemic. Corresponding regulations were made for Scotland, Northern Ireland and Wales.

19 For an overview of the arguments, see: Lord Sumption, ‘Government by decree – Covid-19 and the Constitution’ Cambridge Freshfields Lecture, 2020.

20 *R (Dolan) v Secretary of State for Health & Social Care* [2020] EWCA Civ 1605.

21 House of Lords Select Committee on the Constitution, n 7 above.

over 400 statutory instruments relating to COVID had been laid before Parliament.<sup>22</sup> General and long-standing concerns about weak levels of scrutiny within the delegated legislation system inevitably attached to the regulations mandating lockdown, but such concerns were no doubt exacerbated by the profound impact that the lockdown regulations were having on national life through criminalising routine behaviours.<sup>23</sup>

### Lockdown guidance

As a vehicle to provide further direction to the public, the four governments within the UK also relied extensively on ‘public health advice’. They published such advice through official websites, covering issues such as good practices to reduce transmission, and travel advice. As the pandemic progressed, the governments made further use of their websites, and they became a primary source of information for the public – who were naturally not widely expected to search through hundreds of pages of regulations. During the first lockdown, government websites were geared up to provide detailed advice on social distancing and explain the new rules that were implemented in law. This guidance was, though it would appear to the public as a webpage, a form of soft law: ‘rules of conduct or pointers and commitments which are not directly legally enforceable but which may be treated as binding in particular legal or institutional contexts’.<sup>24</sup> In other words, whilst the soft law of the lockdown had the same aim as the hard law in terms of shaping public behaviour, it lacked the formal legal authority to require that behavioural change.

While the use of soft law guidance was almost inevitable in pandemic conditions – not least as it is habitually used in modern government practice and has demonstrated capacity to improve accessibility – the manner in which governments sought to use it was widely criticised on the basis that law and guidance was often conflated.<sup>25</sup> For example, the first lockdown restrictions made it an offence for a person in England to leave their home without a reasonable excuse, which included the ‘need ... to take exercise’.<sup>26</sup> There was no legal limit on the type of exercise that could be undertaken or the duration of the exercise. However, the guidance stated that people could only undertake ‘one form of

22 On the dominance of delegated legislation as a law-making technique, see E.C. Page, *Governing by Numbers: Delegated Legislation and Everyday Policy Making* (Oxford; Hart Publishing, 2001).

23 For an excellent study on the problems within the modern system of delegated law-making, see: R. Fox and J. Blackwell, *The Devil is in the Detail: Parliament and Delegated Legislation* (London: Hansard Society, 2014).

24 There is no generally accepted definition of soft law. This is the helpful definition provided by Rawlings, n 2 above. Another prominent definition can be found in; F. Snyder, ‘Soft Law and Institutional Practice in the European Community’ in S. Martin (ed), *The Construction of Europe* (Dordrecht, Netherlands; Boston: Kluwer Academic, 1994) 198.

25 House of Lords Select Committee on the Constitution, n 7 above; Hickman, n 4 above.

26 Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350), Reg 6(2)(b).

exercise a day'.<sup>27</sup> When restrictions were reduced in law,<sup>28</sup> the Prime Minister stated that individuals were now permitted to 'exercise outdoors as often as you wish'<sup>29</sup> and at least one police force characterised this as a change to the law.<sup>30</sup> Another example can be seen in how, in July 2020, when new restrictions were announced for areas of northern England, the Health Secretary Matt Hancock stated on the social media platform Twitter that 'from midnight tonight, people from different households will not be allowed to meet each other indoors' in the affected locations.<sup>31</sup> The Derbyshire Constabulary announced the next day that new restrictions were in force:

You must not: Meet people you do not live with inside a private home or garden, except where you have formed a support bubble (or for other limited exemptions to be specified in law); Visit someone else's home or garden even if they live outside of the affected areas; socialise with people you do not live with in other indoor public venues – such as pubs, restaurants, cafes, shops, places of worship, community centres, leisure and entertainment venues, or visitor attractions.<sup>32</sup>

However, these rules did not have any legal effect until five days later, when regulations were made.<sup>33</sup>

The House of Lords Constitution Committee has observed a multiplicity of such instances where the government 'failed to set out the law clearly, misstated the law or laid claim to legal requirements that did not exist'.<sup>34</sup> It has pointed to five variations of this problem: where Government publications and statements did not distinguish between public health advice and legal requirements; where rules were identified by the Government as having legal effect without any law having been made; where Ministers assumed a right to issue guidance or legal directions without any delegation of power from Parliament; where public health advice was incorrectly enforced by the police as though it were law; and where public authorities tasked with enforcing the COVID-19 restric-

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27 Cabinet Office, 'Guidance: Staying at home and away from others (social distancing)' 1 May 2020 at <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> (last accessed 10 May 2022).

28 Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No 2) Regulations 2020 (SI 2020/500).

29 Prime Minister's Office, 'Prime Minister's article in the Mail on Sunday' 17 May 2020 <https://www.gov.uk/government/speeches/prime-ministers-article-in-the-mail-on-sunday-17-may-2020> (last accessed 10 May 2022).

30 Hertfordshire Constabulary, 'Changes in Government guidance' 14 May 2020 at <https://www.herts.police.uk/news-and-appeals/changes-in-government-guidance-covid19> (last accessed 10 May 2022).

31 Matt Hancock (@MattHancock), Tweet on 30 July 2020 at <https://twitter.com/MattHancock/status/1288931858856710150> (last accessed 10 May 2022).

32 Derbyshire Constabulary, 'New restrictions introduced for parts of northern England bordering Derbyshire' 31 July 2020 at <https://www.derbyshire.police.uk/news/derbyshire/news/news/forcewide/2020/july/new-restrictions-introduced-for-parts-of-northern-england-bordering-derbyshire/> (last accessed 10 May 2022).

33 Health Protection (Coronavirus, Restrictions on Gatherings) (North of England) Regulations 2020 (SI 2020/828).

34 House of Lords Select Committee on the Constitution, n 7 above, 31. See also: Joint Committee on Statutory Instruments, n 8 above, 13-17.



tions misstated, or incorrectly suggested, that guidance had the force of law.<sup>35</sup> The Committee concluded that such use of guidance has ‘undermined legal certainty by laying claim to legal requirements that do not exist’.<sup>36</sup> The legal and constitutional critique represented in this condemnation is that, through such actions, the government effectively undermined the established hierarchy of legal authority within the constitution through its capacity to influence the public’s understanding of what is legally required.

The constitutional critique about the conflation of law and guidance during the pandemic is of considerable significance. Yet, a question remains about whether public perceptions of the legal status of lockdown restrictions made a difference to people’s behaviour. This is the empirical question that lies at the heart of this article. In the next section we set out the details of the research project that examined this issue.

### THE STUDY AND PUBLIC PERCEPTIONS OF THE LEGAL STATUS LOCKDOWN RULES

This article emerges from a broader project regarding law and compliance during COVID-19. The research project included a qualitative work package, involving online discussion boards (n = 102) and semi-structured video-call interviews (n = 47), as well as a quantitative work package, comprising a ‘panel study’<sup>37</sup> of around 1600 UK residents, surveying them at three different stages of the pandemic. A professional panel provider, *YouGov*,<sup>38</sup> oversaw the survey participants’ initial selection, randomly selecting them from their sample base of over 185,000 adults. The survey was conducted by way of online questionnaire. The sample was weighted to be representative of the adult population. The analysis presented in this article is based primarily on the quantitative element of our project, specifically the second survey (n = 1158), conducted between 8 June 2020 and 12 June 2020, eleven weeks after the imposition of the UK-wide lockdown on 23 March 2020. By this point in time, restrictions on ordinary activities had become a relatively settled feature of everyday life.

During the pandemic, the development of law and guidance for the purpose of restricting public behaviour was a devolved matter. Each of the governments within the UK developed its own set of rules. As noted above, all four governments adopted a hybrid system of regulation whereby the rules setting out the restrictions on ordinary activities were based in both legislation and government guidance. Thus, some rules were based in law, while others were not.<sup>39</sup> Although the restrictions applying in England, Northern Ireland,

35 *ibid*, 31–32.

36 *ibid*, 37.

37 Panel studies are a form of longitudinal research whereby data are collected from a specific group of research participants at various points over a period of time.

38 See <https://yougov.co.uk>.

39 Hickman *et al* offer a helpful overview of the varied use of law and guidance across the four nations at an early stage of the pandemic: see T. Hickman, E. Dixon and R. Jones, ‘Coronavirus and Civil Liberties in the UK’ (2020) 25 *Judicial Review*, 151.



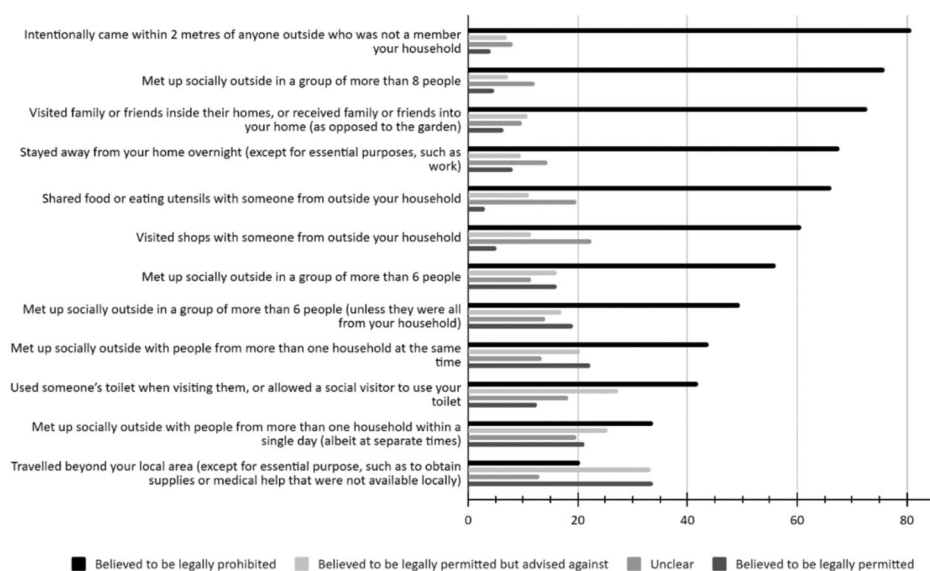


Figure 1: Perceptions of status of rules restricting activities

Source: Authors' own analysis (weighted)

Scotland and Wales were similar to each other in substantive content, they were not identical. This created room for public confusion about which restrictions applied to which sub-UK jurisdiction. Accordingly, we adopted an expansive approach in our survey and asked our participants about twelve activities that formed the basis of continuing behavioural restrictions in at least one of the UK nations. In doing so, we recognised that some participants in, for example, Scotland may have believed that an English rule applied to them, and vice versa. To accommodate this possibility, and to ensure that our analysis was based on people's own beliefs about the restrictions that applied to them, the questionnaire asked participants whether, in relation to where they lived, they believed these twelve activities to be 'legally allowed', 'legally allowed but advised against by government', or 'not legally allowed' (participants were also permitted to indicate that they were 'unclear on this'). Our findings on this question are set out below in Figure 1 below.

It is apparent from these findings that there was considerable variation of beliefs about whether the twelve restricted activities set out in our questionnaire were legally permitted, legally prohibited, or advised against by government in the nations of the UK where participants lived. The extent of such variation differed considerably between activities, of course, and some of this variation may be accounted for by the different approaches to specific restrictions adopted by the four nations within the UK. Nonetheless, in relation to restrictions that only applied in one of the smaller nations,<sup>40</sup> we can observe that the majority of UK participants believed this to be a legal rule that applied to them. And

<sup>40</sup> For example the Scottish restriction that 'you must not visit shops with someone from outside your household'.

in relation to the three restrictions that were common to all four nations,<sup>41</sup> we can still observe differences of understanding amongst the public about the legal status of those rules. Even in relation to the ‘two-metre rule’, for example, where we see the strongest concurrence of perceptions across the UK about the prohibited legal status of the activity, only four out of five of participants shared the view that the underpinning rule had the backing of law. From a legal perspective, this understanding of the ‘two-metre rule’ as being based in law was actually incorrect.<sup>42</sup> Yet, the important point for the purposes of this article is that the data in Figure 1 demonstrate that the UK provided fertile ground for exploring the potential significance of the perceived legal status of public health rules during the COVID-19 pandemic for public behaviour.<sup>43</sup> The diversity of perceptions about the legal status of the rules restricting behaviour permitted us to explore whether those perceptions mattered for compliance with the rules. It is to this question that we now turn.

### PERCEPTIONS OF THE LEGAL STATUS OF RULES AND COMPLIANCE

The central empirical question of this article is whether perceptions of the legal status of rules restricting behaviour during the first wave of the pandemic were significantly correlated with people’s behaviour. In other words, did the belief that a rule had the backing of law make it more likely that people would comply with that rule?

Our research approach for answering this question required three stages. First, we had to find out which rules our participants had complied with.<sup>44</sup> Second, we conducted a simple test to determine whether there was a statistically significant difference between participants’ compliance with each of the twelve rules depending on their beliefs about the status of the rule (ie no rule; legal rule; government guidance; uncertain about it). Third, zooming in on three of the twelve rules, we conducted a more complex test to see whether the statistically significant relationship still held after taking into account additional potential influences on behaviour. In this section of the article, we describe these stages in detail before acknowledging the limitations of the study.

41 ‘You must not intentionally come within two metres of anyone outside who is not a member of your household’; ‘You must not visit family or friends inside their homes, or receive family or friends into your home (as opposed to the garden)’; and ‘You must not stay away from your home overnight (except for essential purposes, such as work)’.

42 n 4 above

43 We use the term ‘rule’ here in a non-technical sense to refer to formal instructions (irrespective of formal legal status) to the public about how to behave during the pandemic.

44 More accurately, we had to determine which activities they had refrained from: where participants did not believe that a particular rule existed, it is not, strictly speaking, correct to frame them as having ‘complied’ with that rule.

Table 1. Restricted activities and whether participants refrained

	Refrained from activity (per cent)	Did not refrain from activity (per cent)
Visited family or friends inside their homes, or received family or friends into your home (as opposed to the garden)	73.9	26.1
Used someone's toilet when visiting them, or allowed a social visitor to use your toilet	75.1	24.9
Intentionally came within two metres of anyone outside who was not a member your household	75.5	24.5
Travelled beyond your local area (except for essential purpose, such as to obtain supplies or medical help that were not available locally)	78.0	22.0
Met up socially outside with people from more than one household at the same time	80.2	19.8
Met up socially outside with people from more than one household within a single day (albeit at separate times)	80.8	19.2
Shared food or eating utensils with someone from outside your household	84.9	15.1
Met up socially outside in a group of more than six people (unless they were all from your household)	89.7	10.3
Met up socially outside in a group of more than six people	89.9	10.1
Visited shops with someone from outside your household	89.3	10.7
Met up socially outside in a group of more than eight people	94.6	5.4
Stayed away from your home overnight (except for essential purposes, such as work)	94.6	5.4

Source: Authors' own analysis (weighted).

### Stage 1: Levels of compliance with rules restricting behaviour

We asked our survey participants how many times, since lockdown began, they had engaged in twelve activities that, as noted above, formed the basis of continuing behavioural restrictions in at least one of the UK nations. Those who indicated having engaged in the activity once or more were coded as not having followed the rule. Those who indicated that they had never engaged in an activity in question were also asked whether they had ever 'bent' the rule underpinning the restriction.<sup>45</sup> Following our qualitative findings about 'rule bending', participants who indicated having 'bent' the rule were also coded as not having followed the rule.<sup>46</sup> Thus, our definition of following a rule (having refrained from a restricted activity) was never having engaged in the activity and never having bent the rule which restricted the activity. Our findings on this question are presented in Table 1 below.

45 The proportion of respondents 'bending' rules ranged from two per cent ('you must not meet up socially outside in a group of more than eight people') to eight per cent ('you must not intentionally come within two metres of someone outside who is not a member of your household').

46 J. Meers, S. Halliday and J. Tomlinson, "'Creative Non-compliance': Complying with the "Spirit of the Law" Not the "Letter of the Law" under the Covid-19 Lockdown Restrictions' (2021) *Deviant Behavior* DOI: 10.1080/01639625.2021.2014286 (last accessed 23 June 2022).

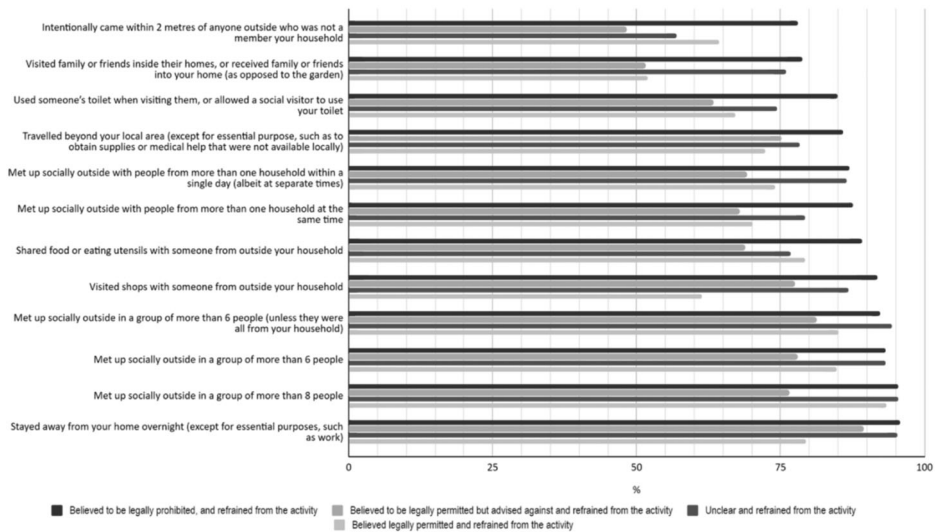


Figure 2: Refraining from activities according to perceptions of status of rules

Source: Authors' own analysis (weighted)

It is apparent from the above data that, whilst the majority of people seemed to refrain from each activity, there were certain activities from which the population was less likely to refrain. Approximately three out of four people refrained from visiting family and friends inside their homes or receiving family and friends into their own homes (as opposed to the garden). Yet at the other end of the scale, almost 95 per cent of people refrained from meeting up outside in groups of more than eight people, or from staying away from home overnight. These findings have an intrinsic interest in and of themselves. However, for the purpose of this article, their value lies in the ability to relate people's behaviour to their beliefs about the legal status of the underpinning rules. This was the next stage in our analysis.

## Stage 2: Bi-variate analysis

We next conducted a relatively simple test (a chi square test) to examine whether there was a statistically significant difference between respondents' propensity to refrain from each activity depending on whether they considered the activity to be legally prohibited, legally permitted, legally permitted but advised against, or whether they were unclear about it. The analysis of this 'bivariate' relationship between the dependent variable (whether they refrained from the activity) and our main independent variable (perceived legal status of the activity) is presented in Figure 2 below.

For each of the twelve restricted activities, participants' perceptions of the activities' legal status were highly significant ( $p < 0.001$ ) in predicting whether they refrained from the restricted activity. Those who perceived the activity to be prohibited by law were more likely to refrain from the activity compared to

participants who believed it was merely advised against by government. Across the different activities, at least 78 per cent of those who, in relation to where they lived, considered an activity to be prohibited by law refrained from the activity, with five of the activities attracting over 90 per cent of such participants refraining. This is in marked contrast to those who considered an activity to be merely advised against by government, with the proportion of those refraining from activities ranging between 48.1 per cent and 89.9 per cent. This difference in the respective proportions of participants refraining from an activity is largest for the ‘two-metre rule’: there was a significant difference in whether participants complied with the ‘two-metre rule’ according to their perception of the legal status of the underpinning rule,<sup>47</sup> with 78 per cent of those who perceived this activity to be prohibited by law complying, compared to only 48.1 per cent of those who considered it to be merely advised against by government. Also, 78.8 per cent of those who considered visiting family or friends inside their homes, or receiving family or friends into one’s home to be prohibited by law refrained from doing so, compared to only 51.4 per cent who thought it was only advised against by the government.<sup>48</sup> The proportion refraining from ‘meeting up socially outside in a group of more than six people’ was higher, but still differed significantly according to perception of the legality of undertaking the activity,<sup>49</sup> with 93.2 per cent refraining if they considering the activity to be prohibited by law, compared to 77.8 per cent refraining if they considered the activity to be merely advised against by government.

In relation to all twelve restricted activities, accordingly, our bi-variate analysis suggested the UK public’s perception of the legal status of the rules made an important difference to whether they complied with those rules. The next stage of the analysis was to explore whether this apparent relationship still held after taking into account the potential influence of other factors that may also have shaped people’s responses to the pandemic restrictions. It is to this ‘multi-variate’ analysis that we now turn.

### Stage 3: Multi-variate analysis

Previous bodies of research have suggested that a range of factors might influence the public’s inclination to obey the law or to follow public health guidance. We wanted to understand whether the perceived legal status of rules still mattered for our participants’ behaviour after isolating it from these variables. In other words, this second and more complex stage of the analysis involved the application of a number of ‘controls’. The controls related to health protection concerns on the part of the public; people’s assessments of their government’s handling of the pandemic; social norms around compliance with the rules; and participants’ socio-demographic characteristics. We set these out in turn.

First, in relation to health protection sensibilities, there was the issue, explored extensively in the public health literature, of people’s desire to avoid catching

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47  $\chi^2(3)=47.9899$   $p=0.001$

48  $\chi^2(3)=57.5771$   $p=0.001$

49  $\chi^2(3)=39.1352$   $p=0.001$

or spreading the virus.<sup>50</sup> We measured this by asking participants, in relation to each of the restricted activities, how much of a risk there would be of catching or spreading the virus if they were to break the rule in question.<sup>51</sup> We also took account of our participants' sense of health vulnerability in the event of infection. This was measured by a single question: 'if you were infected with the coronavirus, how seriously do you think it would affect your health, if at all?'.<sup>52</sup>

Second, as regards participants' assessments of their government's handling of the pandemic crisis, we examined their trust in government. The issue of trust in authorities has been highlighted in several studies of public behaviour during pandemics.<sup>53</sup> We asked participants about the extent to which they trusted government in its handling of the crisis, with participants in each of the UK's four nations being questioned in relation to their own government.<sup>54</sup> We also controlled for participants' support for, or opposition to the government in its handling of the crisis.<sup>55</sup> Again, participants were questioned in relation to their own government.

Third was the issue of social norms. These have also been highlighted as significant for public behaviour during the pandemic<sup>56</sup> as well as for legal compliance more generally.<sup>57</sup> Following Tom Tyler's approach to social norms,<sup>58</sup> and in relation to each activity, we asked participants to think about five adults they knew best in the UK and to indicate how much they would disapprove of them doing the activity in question.<sup>59</sup>

50 A. Bish and S. Michie, 'Demographic and attitudinal determinants of protective behaviours during a pandemic: a review' (2010) 15 *British Journal of Health Psychology* 797.

51 We included this as a binary variable, controlling for whether the respondent considered engaging in the specific activity to be a 'big risk/medium risk', compared to a 'small risk/ no risk at all'.

52 This was included as a binary variable: those who thought it would affect them 'very/fairly seriously', compared to 'not very/not at all seriously'.

53 A. Pak, E. McBryde and O.A. Adegbeye, 'Does High Public Trust Amplify Compliance with Stringent COVID-19 Government Health Guidelines? A Multi-Country Analysis Using Data from 102,627 Individuals' (2021) 14 *Risk Manag Healthc Policy* 293; O. Saechang, J. Yu and Y. Li, 'Public Trust and Policy Compliance During the COVID-19 Pandemic: the Role of Professional Trust' (2021) 9 *Healthcare* 151; G.A. Travaglino and C. Moon, 'Compliance and Self-Reporting During the COVID-19 Pandemic: a Cross-Cultural Study of Trust and Self-Conscious Emotions in the United States, Italy and South Korea' 2021 *Front Psychol* 12.

54 This was included as a binary variable: those who trusted government 'a lot/a fair amount', compared to 'not very much/not at all'.

55 This was included as a binary variable: those who 'strongly supported/tended to support government', compared to those who 'tended to oppose/ strongly opposed government'.

56 T. Bogg and E. Milad, 'Demographic, Personality and Social Cognition Correlates of Coronavirus Guideline Adherence in a US Sample' (2020) 39 *Health Psychol* 1026; R.K. Webster, S.K. Brooks, L.E. Smith, L. Woodland, S. Wessely and G.J. Rubin, 'How to Improve Adherence with Quarantine: Rapid Review of the Evidence' (2020) 182 *Public Health* 163; J. Barceló, G.C.H. Sheen, 'Voluntary Adoption of Social Welfare-Enhancing Behavior: Mask-Wearing in Spain During the COVID-19 Outbreak' *PLoS One* 1 December 2020; B. Tunçgenç, M. El Zein, J. Sulik et al, 'Social Influence Matters: we Follow Pandemic Guidelines Most when our Close Circle does' (2021) 112 *Br J Psychol* 763.

57 T.R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2<sup>nd</sup> ed, 2006).

58 *ibid.*

59 These data were included as a binary variable: those who felt their peers would disapprove 'a great deal/a fair amount', compared to 'not very much/not at all'.

Finally, previous studies have demonstrated how certain socio-demographic variables can be important for predicting behaviour during pandemics. Thus, to isolate the effect of the perceived legal status of rules, we also controlled for gender;<sup>60</sup> age;<sup>61</sup> educational qualification (low/high qualification);<sup>62</sup> ethnicity (white/non-white);<sup>63</sup> marital status (married/couple or single/divorced/separated or widowed);<sup>64</sup> work status<sup>65</sup> (working/non-working) and the presence (or not) of young children.<sup>66</sup> We also controlled for participants' locale within the UK (England, Northern Ireland, Scotland, Wales), anticipating the possibility that this could be a confounding variable which influenced participants' perceptions of the legal status of rules, as well as their propensity to engage in restricted activities.

Our method of multivariate analysis was to examine the likelihood of participants refraining from restricted activities according to whether they believed them to be legally permitted, believed them to be prohibited by law, or were uncertain, compared to believing them to be legally permitted but advised against by government (the 'reference category'). It involved, in other words, a comparison of the odds ratios of following a rule given one's belief in the status of that rule. For the purpose of this 'logistic regression', we limited our focus to three of the twelve restricted activities featured in the survey. These three rules represented variation in the context of the activities being restricted. Two activities involved socialising: (1) 'Visited family or friends inside their homes, or received family or friends into your home, as opposed to the garden' (the 'meeting up inside' rule); and (2) 'Met up socially outside in a group of more than six people' (the so-called 'rule of six'). The third involved social distancing: (3) 'Intentionally came within two metres of anyone outside who was not a member your household' (the 'two-metre' rule).

Our findings about the odds of following these three rules according to one's belief in the rules' status are set out below in Table 2. The associations that have statistical significance are denoted with one or more asterisk. Those without asterisks do not have statistical significance but are nonetheless reported for the purpose of transparency. The number of asterisks attached to a finding of statistical significance denotes different 'p-values' or 'probability values'. A single asterisk denotes a p-value of 0.05, a double asterisk denotes a p-value of 0.01, and a triple asterisk denotes a p-value of 0.001. These different values tell us how likely it is to have that finding if the null hypothesis were true. In other words, if, for example, a finding has a p-value of 0.01 (a double asterisk), it means that, if there was truly no association between the variables in the real world, and if we repeated the survey a hundred times with different samples, we

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60 Pak, McBryde and Adegboye, n 53 above.

61 *ibid.*

62 *ibid.*

63 *ibid.*

64 S. Uddin, T. Imam, M. Khushi, A. Khan and M. Ali, 'How did Socio-Demographic Status and Personal Attributes Influence Compliance to COVID-19 Preventive Behaviours During the Early Outbreak in Japan? Lessons for Pandemic Management' (2021) *Pers Individ Dif* 175 <https://doi.org/10.1016/j.paid.2021.110692> (last accessed 10 February 2021).

65 Saechang, Yu and Li, n 53 above.

66 n 64 above.



Table 2. Multivariate Logistic Regression: The likelihood of refraining from three restricted activities: odds ratios (standard errors)

	Meeting up outside	Meeting up inside	Two-metre rule
<b>Whether considered rule to be:</b>			
<i>Advised against by government (ref)</i>			
Prohibited by law	2.65** (0.83)	2.57*** (0.67)	2.35** (0.70)
Permitted	1.14 (0.40)	0.71 (0.29)	1.80. (0.94)
Unclear	2.83 (1.56)	1.94 (0.71)	1.66. (0.69)
<b>Health Controls</b>			
<b>Risk of catching / Spreading virus if rule broken</b>			
<i>Lower risk (ref)</i>			
Higher risk	2.19** (0.59)	2.40*** (0.43)	2.00*** (0.36)
<b>How seriously would you be affected if infected?</b>			
<i>Not very/ not at all. (ref)</i>			
Fairly/ very seriously	1.73* (0.47)	1.02 (0.19)	1.25 (0.23)
<b>Trust in government</b>			
<i>lot/a fair amount (ref)</i>			
not very much/not at all.	0.86 (0.32)	0.93 (0.24)	0.85 (0.22)
<b>Support for government</b>			
<i>strongly supported/tended to support government (ref)</i>			
tended to oppose/ strongly opposed	0.63 (0.25)	0.97 (0.26)	1.01 (0.27)
<b>Peer disapproval</b>			
<i>not very much/not at all (ref)</i>			
a great deal/a fair amount	2.60*** (0.69)	2.83*** (0.50)	2.13*** (0.38)
<b>Demographic Controls</b>			
<b>Gender</b>			
<i>Male (ref)</i>			
Female	1.29 (0.31)	0.72* (0.12)	0.99 (0.17)
<b>Age</b>			
	0.99 (0.01)	1.00 (0.01)	1.01 (0.01)
<b>Educational qualifications</b>			
<i>Higher qualifications (ref)</i>			
Lower qualifications	0.70 (0.18)	1.03 (0.19)	0.81 (0.15)
<b>Have young children?</b>			
<i>No (ref)</i>			
Yes	0.51 (0.22)	0.68 (0.22)	0.86 (0.28)
<b>Married/ living as a couple?</b>			
<i>No (ref)</i>			
Yes	1.18 (0.31)	1.11 (0.20)	1.17 (0.21)
<b>Country</b>			
<i>Scotland/Wales/Northern Ireland (ref)</i>			
England	1.30 (0.40)	0.99 (0.23)	0.96 (0.21)
<b>Work status</b>			
<i>Does not work (ref)</i>			
Work	0.88 (0.25)	0.72 (0.14)	0.87 (0.16)
<b>Ethnicity</b>			
<i>Non-white (ref)</i>			
White	1.81 (0.83)	1.02 (0.36)	1.19 (0.41)
<b>N</b>	870	896	893
<b>Log Likelihood</b>	-246.02313	-446.32161	-456.77919
			0.000
<b>P</b>	0.000	0.000	0.000
<b>Pseudo r squared</b>	0.1433	0.1326	0.0879

\*p = &lt;0.05 \*\*p = &lt;0.01 \*\*\*p = &lt;0.001

Source: authors' own analysis

would falsely declare a positive association on only one occasion. If, however, a finding has a p-value of 0.001 (a triple asterisk), it means that, if there was truly no association between the variables in the real world, and if we repeated the survey a thousand times with different samples, we would falsely declare a positive association on only one occasion.

Our findings reveal five variables that had a statistically significant association with an increased odds of compliance. Each of them, whilst controlling for the influence of other potentially important variables, increased the likelihood of compliance to some extent and with respect to at least one of the three rules examined. The extent to which the likelihood of compliance was increased varied between variables: as Table 2 above demonstrates, some variables were more powerful than others, in this respect. Before focusing on the main variable of interest for the purposes of this article – the perceived legal status of restricting rules – we set out our findings about the control variables.

Only a few of the ‘control variables’ impacted upon behaviour. The two health protection controls were found to have a statistically significant association with an increased likelihood of compliance. First, if participants considered there to be a ‘big/medium risk’ of catching or spreading the virus by engaging in the activity, they were at least twice as likely to refrain from it (depending on the activity) compared to those who considered there to be ‘small/no risk’. Second, the perceived seriousness of infection for one’s health was important for the ‘rule of six’: if participants thought they would be ‘very/fairly seriously’ affected by the virus if infected, they were a little less than twice as likely to refrain compared to those who thought they would be ‘not very/not at all seriously’ affected. Social norms were also associated with an increased odds of compliance in relation to all three rules: if participants thought their peers would disapprove ‘a fair amount/a great deal’ if they engaged in the restricted activity, they were at least twice as likely to refrain compared to those who thought their peers would only disapprove ‘not very much/not at all’. Of the demographic controls, none impacted upon behaviour, with the exception that females (compared to males) were less likely to refrain from ‘meeting up inside’.<sup>67</sup>

As regards the main variable of interest for this article – perceptions of the legal status of rules – our findings suggest that a belief that an activity was prohibited by law did, indeed, increase the odds of refraining from that activity, notwithstanding that other potential influences were controlled for. For each of the three activities examined in the multi-variate stage of the analysis, those who thought the activity was prohibited by law were over twice as likely to refrain from it compared to those who thought it to be legally permitted but advised against by government (the ‘reference’). Those who thought the ‘rule of six’ was based in law were 2.65 times more likely to comply; those who thought ‘meeting up inside’ was legally prohibited were 2.57 times more likely to refrain, and those who considered the ‘two-metre’ rule to be based in law

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67 For further discussion see N. Finch, J. Meers, S. Halliday, J. Tomlinson and M. Wilberforce, ‘Beyond COVID-19 Lockdown Compliance: A Gender Analysis’ in S. Germain and A. Yong (eds), *Beyond the Virus: Multidisciplinary and International Perspectives on Inequalities raised by COVID-19* (Bristol: Bristol University Press, 2022).

were 2.35 times more likely to comply compared those who thought the rule was merely government advice.

Interestingly, for all three rules, there was no statistically significant difference in the likelihood of refraining between those who thought the activity was advised against by government and those who thought it was actually permitted. This further emphasises the importance of a restricting rule's legal status: the belief that an activity was merely advised against by government was no more likely to prompt compliance than a belief that the activity was allowed.

### Study limitations

It is always important to acknowledge the limits of empirical studies. We set them out here. First, although participants were selected randomly from the panel base of over 185,000 UK adults, it is still a 'non-probability sample'<sup>68</sup> and due caution must be exercised when interpreting the findings. The use of a professional panel provider was considered necessary given the pace of events at the beginning of the pandemic and the desire to begin the panel study quickly. Second, although it is a standard approach within the fields of public health and criminology, our dependent variable is based on self-reported rather than observational data. It is possible that social desirability caused some participants to over-estimate their adherence to restrictions, particularly in the context of pandemic.<sup>69</sup> Those who regard law as legitimate and believed COVID-19 restrictions to be based in law may have been especially likely to over-estimate compliance. Third, we did not test the full range of psychological predictor variables identified in the public health literature such as, for example, personality or broader attitudes. It is possible, then, that there are unobserved factors within the study. Fourth, we acknowledge that some of the pandemic rules within the UK were qualified in the sense that some ordinarily restricted activities were permitted in exceptional circumstances (for example visiting someone in their home in order to provide care for them). Thus, it may be that some of our data about engaging in 'restricted' activities represents compliant, rather than non-compliant behaviour. However, given that such qualifications represent exceptions to a norm, and given the extent of contrasting likelihoods of refraining from restricted activities according to belief about a rule's legal status, we remain confident in the overall validity of the finding. Finally, the study is limited to one country only: the UK. We make no claim regarding the application of these UK findings to other countries.

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68 Probability sampling involves each member of the population having an equal chance of being selected to complete the survey. Some form of random selection is used to create the survey sample. Such randomisation reduces the risk of the sample being skewed in some way and represents the best opportunity to create a sample that is representative of the population.

69 J.F. Daoust, É. Bélanger, R. Dassonneville et al, 'A Guilt-Free Strategy Increases Self-Reported Non-Compliance with COVID-19 Preventive Measures: Experimental Evidence from 12 Countries' *PLoS One* 4 April 2021.

## ON THE RISKS OF BLURRING LAW AND GUIDANCE

Sorabji and Vaughan have described the use of soft law during the pandemic as a ‘regulatory hot mess’.<sup>70</sup> It is no surprise, then, that the role of soft law in the UK’s response to the COVID-19 pandemic has been subjected to significant criticism. The legal critiques of the use of soft law have tended to focus on its constitutional impropriety. A blurring – whether unintentional or deliberate – of the distinction between hard law and soft guidance threatened to undercut distinct sources of rule-making authority in the constitution and risked limiting the perceived scope of individual liberty without any legal basis for such restriction. Concerns have thus focused on the development of regulations falling short of parliamentary standards of accountability and transparency,<sup>71</sup> on the lack of clarity around the legal status of pandemic rules,<sup>72</sup> on soft law’s lack of democratic credentials,<sup>73</sup> and on the importance of legal certainty, particularly when civil liberties are at issue.<sup>74</sup> These important critiques express normative concerns about the illegitimacy of the deployment of soft law rules that sought to govern the everyday behaviours of the UK population at a time of national crisis. Such critiques are made by way of an assessment of the development of, and communications about soft law in light of standards of constitutional and legal theory.

Our ambition in this article has been to substantially extend this line of criticism in two related ways. First, we have focused specifically on an empirical dimension of legitimacy and, second, we have directed attention not to the illegitimacy of soft law *per se* but rather to the legitimacy of law more generally. Although the legal critiques of the uses of soft law during the pandemic have largely been normative in content, an underpinning empirical element of the concept of legitimacy is clearly latent in the analyses. We can see this, for example, in references to policing practices, whereby penalties were issued in the absence of legal authority,<sup>75</sup> or in speculations about the potential impact of soft law’s use on public behaviour.<sup>76</sup> Thus, legal critiques about the (il)legitimacy of soft law, whilst largely normative in orientation, ultimately rely methodologically – to some degree, at least – on empirical questions and assumptions. Our analysis brings one of these questions to the surface. It relates to why people obeyed lockdown rules. There is now a long tradition within criminology of exploring why people obey law,<sup>77</sup> particularly in relation to ‘low level’ criminal

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70 Sorabji and Vaughan, n 6 above, 151

71 T. Hickman, ‘Abracadabra Law-Making and Accountability to Parliament for the Coronavirus Regulations’ 2020 at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3732097](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3732097) (last accessed 8 February 2022).

72 n 70 above.

73 Eliantonio, Korkea-Aho and Vaughan, n 9 above.

74 Hickman, Dixon and Jones, n 39 above.

75 n 74 above.

76 n 73 above, 6: ‘What is less clear ... is whether the general public follows soft law because they have faith in the government or whether they follow soft law because they think it imposes hard obligations on them.’

77 G.D. Walters and P.C. Bolger, ‘Procedural Justice Perceptions, Legitimacy Beliefs and Compliance with the Law: a Meta-Analysis’ (2019) 15 *J Exp Criminol* 341.

laws.<sup>78</sup> In this work, clear connections are made between public perceptions of the legitimacy of law and legal compliance.<sup>79</sup> It is in this vein that we have explored questions of the legitimacy of law during the pandemic. Our study suggests that whether a rule was perceived to have the status of law mattered for public adherence to COVID-19 restrictions. Certainly, during the first wave of the pandemic, participants who believed the UK's public health restrictions had the backing of law, as opposed to being merely government guidance, were significantly more likely to refrain from those activities.

Our explanation for this finding is that it reflects the nature of legal culture in the UK. In many developed societies, including the UK, people are socialised into an internalised basic commitment to law abidingness.<sup>80</sup> Thus, the legal order enjoys a basic level of support from the population. This is not to say that such support is uniform, nor that the UK public is unquestioning or uncritical: everyday 'legal consciousness' is far more complex<sup>81</sup> and sustains a degree of internal tension.<sup>82</sup> Rather, our suggestion is that legal culture is marked by a general (albeit rebuttable) predisposition towards complying with law simply because it is law.<sup>83</sup> Within criminology, for example, Tom Tyler<sup>84</sup> has drawn a basic distinction between instrumental and normative motivations towards legal obedience: instrumentally, people may obey the law in order to avoid punishment; normatively, people might comply with law because they feel it is right to do so – they regard the legal order itself as legitimate and so worthy of obedience. A major and repeated finding in the legal compliance literature has been that normative motivations are frequently more significant than instrumental motivations,<sup>85</sup> particularly in relation to 'low-level' crimes,<sup>86</sup> and that perceptions of the legitimacy of law and legal authority are a significant predictor of legal compliance.<sup>87</sup> In a companion piece to this article,<sup>88</sup> using 'structural equation modelling',<sup>89</sup> we set out a separate path analysis of the drivers of compliance with lockdown restrictions perceived by our survey participants to be based in law. It confirms the salience of the broader criminological literature for

78 J. Jackson, B. Bradford, M. Hough, A. Myhill, P. Quinton and T.R. Tyler 'Why do People Comply with the Law?' (2012) 52 Br J Criminol 1051.

79 T. Tyler, 'Procedural Justice and Policing: A Rush to Judgment?' (2017) 13 *Annual Review of Law and Social Science* 29.

80 n 57 above.

81 S. Halliday and B. Morgan 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 *Current Legal Problems* 1.

82 S. Silbey, 'Legal Culture and Cultures of Legality' in J. Hall, L. Grindstaff and M.C.M. Lo (eds), *Handbook of Cultural Sociology* (Abingdon: Routledge, 2010).

83 See S. Halliday, N. Finch, J. Meers, J. Tomlinson and M. Wilberforce, 'Why the UK Complied with COVID-19 Lockdown Law' (forthcoming, under review).

84 n 57 above.

85 K. Murphy, B. Bradford and J. Jackson, 'Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?' (2016) 43 *Criminal Justice and Behavior* 102.

86 Jackson, Bradford, Hough, Myhill, Quinton and Tyler, n 78 above.

87 Walters and Bolger, n 77 above.

88 n 83 above.

89 Structural equation modelling is a multivariate statistical analysis technique for exploring relationships between measured variables and latent constructs. It allows greater freedom than standard regression analysis, permitting the researcher to simultaneously explore the relationship between one or more predictor variables and one or more dependent variables.

our study of why people obeyed lockdown law. A commitment to law abidingness, rather than a fear of formal sanction,<sup>90</sup> was an independent and direct driver of compliance behaviour. In other words, the fact that some of the UK population believed that some of the lockdown restrictions had the status of 'law' made a difference to levels of compliance during the pandemic, irrespective of the possibility of punishment in the event of breach.

As Tyler has put it, the legal order itself enjoys a 'reservoir of loyalty'.<sup>91</sup> Such loyalty, we suggest, is a precious commodity for any government to hold, particularly during a time of national crisis. In an empirical sense, people confer legitimacy on law and legal authority.<sup>92</sup> Such legitimacy is, in effect, held in trust. Thus, those in positions of public authority must steward with care the power that legality holds in society, especially if law is to be used as a major regulatory tool to shape public behaviour during a crisis. Given that our findings show that the perceived force of law affected the public's response to lockdown rules, sustained obfuscation as to the legal status of rules governing behaviour may not only have generated confusion but also risked undermining the public's loyalty to the law itself.

The principal lessons for the relationship between law and good government here are two-fold. First, law does matter to compliance and therefore whether any rule is to be based in law or guidance ought to be seen as an important substantive component of the design of policy interventions, and not just a matter of formality. Second, how such soft law is drafted and communicated is of critical importance. Guidance which itself misrepresents the law or is communicated in a way that seems to misrepresent the status of certain rules risks having long-term negative effects on the legitimacy of the law and so of legal compliance. In this regard, our analysis supports government practice according to the Hickman principles: (1) guidance should clearly distinguish information about the law from public health advice; (2) all underlying or associated legal instruments should be clearly and accurately identified and an accurate link to a copy of the up-to-date law should be provided; (3) information about the law should be accurate and complete; (4) where the law is too complex to be set out in full the fact that the account is partial should be made clear and key parts of the law should not be omitted; (5) guidance should make clear when opinions are offered about the interpretation of the law and the status of such opinions; and (6) guidance should not suggest that instructions are based on law when they are not.<sup>93</sup>

## CONCLUSION

In this article, we have presented an empirical analysis of the UK public's adherence to lockdown rules that attempted to restrict a range of ordinary behaviours

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90 The anticipation of formal sanction was, however, associated with the anticipation of peer disapproval which, in turn, was a direct driver of compliance.

91 n 57 above, 26.

92 D. Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan, 2<sup>nd</sup> ed, 2013).

93 Hickman, n 4 above.

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– restrictions that came with significant and widespread social, economic and health costs. Our analysis adds a new dimension to concerns over the use of soft law to regulate public behaviour during the COVID-19 pandemic. The use of soft law has been subject to important ‘top-down’ critiques to the extent that certain guidance, and how it was communicated, undercut the constitutional legitimacy of rule-making in the state apparatus. Our analysis offers an additional ‘bottom-up’ critique: that a lack of clarity and transparency about the use of soft law alongside hard law may damage the legitimacy of law itself and so undermine its potential to shape public behaviour in ways deemed necessary during a time of national crisis.