

Witness Name: Simon Tse

Statement No.: First

Exhibits: 17

Dated: 20 February 2023

## UK COVID-19 INQUIRY

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### CORPORATE STATEMENT OF SIMON TSE

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I, Simon Tse, Chief Executive of the Crown Commercial Service, The Capital, Old Hall Street, Liverpool, L3 9PP, will state as follows:

#### Introduction

1. I make this corporate statement in response to the inquiry's request for evidence dated 5 January 2023, in order to address matters of relevance to the Crown Commercial Service's ('CCS') role in resilience and preparedness in the years prior to the COVID-19 pandemic. In order to answer this request, it is necessary for me to go into some detail as to the history of CCS and explain the function that it performs generally and how it operates within the domain of public procurement. I have also provided an outline of matters on which CCS was brought in to assist the government response to the COVID-19 pandemic.
2. CCS is an Executive Agency of the Cabinet Office ('CO'). The Rule 9 request from the Inquiry did not cover the Central Commercial Teams ('CCT')<sup>1</sup> in the CO, which (as this statement explains) report into the Government Chief Commercial Officer ('GCCO'). Both CCS, and the CCT provide (among other things) specialist

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<sup>1</sup> The formulations 'Central Commercial Teams' and 'Commercial Central Teams' have been used interchangeably in both internal documents and published documents to label the teams in the CO that report to the GCCO. For consistency, I have employed the formulation 'Central Commercial Teams' or 'CCT' throughout this document.

commercial support to other government departments, including for example the Department of Health and Social Care ('DHSC').

3. Should the Inquiry require a broader CO view, that covers to a fuller extent the CO's roles and functions in commercial matters, my colleagues in the CO are standing ready to assist.
4. Due to the size of CCS and the nature of its operations, it is not possible for one individual to speak from personal experience to each of the matters covered by the Inquiry's request for evidence. This corporate statement has, accordingly, been drafted with the assistance of the Government Legal Department, Pinsent Masons LLP and my colleagues within CCS.

### **Introduction to the author**

5. I have been a Civil Servant since 2008. I have undertaken various roles within the Civil Service since that time. Between 2010 and 2013 I was the Chief Executive of the Driver and Vehicle Licensing Agency. I then moved to the Department for Work and Pensions in 2013 as Health Services Director.
6. I initially came to work in CCS as Procurement Operations Director. This was a role to which I was appointed in 2016. I was appointed Interim Chief Executive of CCS in July 2018 and was confirmed in this role following a formal recruitment process in December 2018. As Chief Executive of CCS, I am also an employee of the Government Commercial Organisation ('GCO') – I will refer further to this organisation in the course of this statement.

### **Overview of CCS**

#### ***Introduction***

7. Established in April 2014, CCS is an Executive Agency of the Cabinet Office ('CO') and a Trading Fund, established through secondary legislation (Trading Fund Orders) under the Trading Funds Act 1973. CCS is a key constituent of the Government Commercial Function ('GCF') [ST/1 - ST\_CCS00000005], along with the

CCT in the CO that report to the GCCO and the commercial directorates of central government departments and their arms-length bodies ('ALBs'). Although CCS was established in 2014, a Trading Fund with responsibility for enabling public procurement had operated since 1991 under a series of alternative names. Details of these are set out later in this statement. CCS directly employs c.800 Civil Servants across the UK, with locations in Liverpool, Newport, Birmingham, Norwich and London. A further c.180 CCS staff are employed formally by the GCO - a training and employment organisation for senior commercial professionals in central government - and deployed into CCS. The operation of the GCO is managed in the CO by the CCT.

8. I have set out in the appendix to this statement, a brief overview and descriptions of some of those organisations cited above, and with whom CCS operates.

### ***History & Evolution of CCS***

9. The Trading Fund that is now titled CCS [ST/2 - ST\_CCS00000014] was first established as the Buying Agency, under the Buying Agency Trading Fund Order 1991. In 2001, the Trading Fund's title was changed to OGC Buying.Solutions. In 2009, it was changed to Buying Solutions and in 2011 to the Government Procurement Service. It was changed again to CCS in 2014. These changes were formalised in secondary legislation as amendments to the Trading Fund Order. The activity of these predecessor organisations was consistent in providing commercial arrangements such as framework agreements to enable the procurement of primarily those goods and services which were required in common by multiple public sector organisations.
10. The purpose of CCS in 2014 was initially different from that of its predecessor organisation in that a major programme of activity was launched in 2013/14 with government departments requiring them to transfer a much greater proportion of their procurement activity to CCS for CCS to undertake on their behalf in return for a fee. This also involved a transfer of procurement resources from those departments to CCS.
11. In practice this initiative was not fully implemented and in 2016 CCS ceased to seek to absorb departments' procurement activity, and re-organised and standardised its service offer, prioritising the development and operation of commercial agreements

based on deep category expertise and offering a defined assisted procurement service to those departments that wanted it. CCS also at this point re-established its income generation model, opting to cease charging a fee to public sector organisations and instead relying on a levy charged to those suppliers on its commercial agreements in proportion to the level of business they won.

12. Under the assisted procurement service, [ST/3 - ST\_CCS00000012] CCS managed the call off process from primarily CCS agreements on departments' behalf. For the CO and for HM Treasury only, CCS agreed exceptionally to provide an enhanced assisted service which included completing transparency activity on procurement activity that CCS's assisted service had managed for those departments and, where asked to do so, running open market competitions where a CCS commercial agreement did not cover requirements.
  
13. A National Audit Office ('NAO') Value for Money review of CCS published in December 2016 describes CCS's reorganisation and the context in which it took place.<sup>2</sup> As part of this review, the NAO also examined the relationship between CCS and the CO. Following the NAO review - and responding to the NAO's and the subsequent Public Accounts Committee's recommendations - CCS and the CO resolved some evident misalignment between the financial accountability and management accountability for teams that were included within and funded by the CCS Trading Fund but whose day to day management was undertaken by the GCCO in the CO. When CCS was launched all functions reported to the CCS Chief Executive, but by the middle of 2015 the CO decided that three functions with a cross government commercial reform and improvement remit would report to the GCCO on a day-to-day basis. These were the Complex Transactions team, the Strategic Suppliers team (responsible for managing government's strategic suppliers) and the Commercial Capability team. In 2017, the CO assumed funding responsibility for these three teams, in so doing aligning financial and management accountability for these teams within the CO and under the control of the GCCO. In 2018, the CO and the GCCO also assumed funding and management responsibility for a further team - the Government Commercial Policy team - and this team also moved out of CCS. Together these transferred teams and other teams that have since been formed within the CO and which report directly to the GCCO, are known as the CCT.

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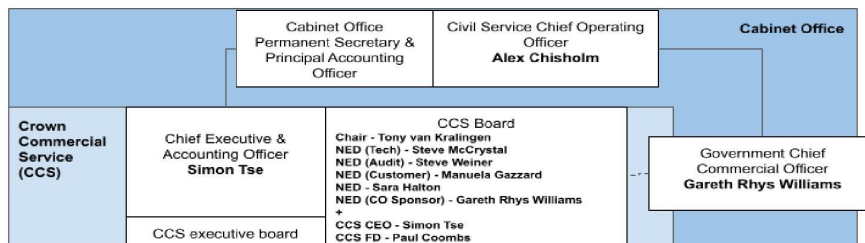
<sup>2</sup> <https://www.nao.org.uk/reports/crown-commercial-service/>

14. This separation of activity served to allow CCS to focus on its primary function as an operational organisation at arms-length from the CO, with CCS responsible for enabling the procurement of goods and services required in common by the public sector (something which I will expand on further below). In turn, this separation also enabled the CCT, under the direction of the GCCO, to coordinate the cross government Commercial Function and drive reform and continuous improvement from the CO.

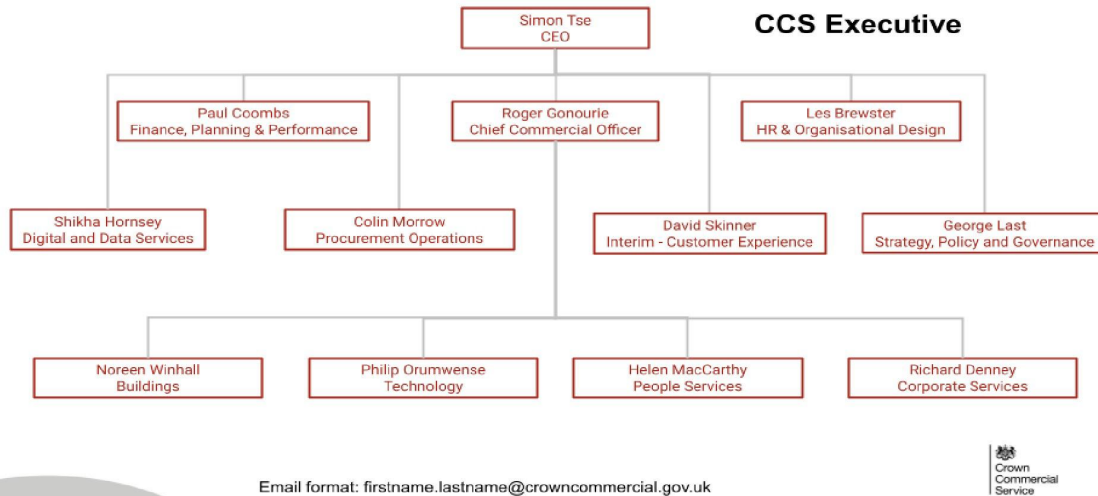
**Composition of CCS**

15. As Chief Executive of the CCS Trading Fund and Executive Agency, [ST/4 - ST\_CCS00000001] I am advised by a Board with a non-executive Chair and a number of non-executive directors. The GCCO (Gareth Rhys Williams) is one of these non-executive directors and attends the CCS Board. He is also the designated Sponsor for CCS within the CO. His role as Sponsor for CCS, the role of the Minister for the Cabinet Office and the CO Permanent Secretary and that of the CCS Board are set out in the CCS framework document [ST/5 - ST\_CCS00000007] which describes CCS’s governance as an arms-length body.
16. As Chief Executive of CCS, I report directly to the Permanent Secretary of the CO who is the Principal Accounting Officer for the CO and its arms-length bodies. As the Accounting Officer for CCS, I am accountable to Parliament for the operation of CCS.
17. The following diagram illustrates CCS governance structure:

**CCS’s CEO is advised by a Board with a non-executive Chair and four non-executive directors**



18. Within that structure of governance, the CCS is currently organised into 7 directorates, with a further 4 pillar directors reporting to a CCS chief commercial officer (CCO). Between 2017 and 2022, the 4 pillar director roles reported directly to the Chief Executive and there was no CCS CCO role.



### **Role & Function of CCS**

19. CCS's purpose is to help UK central government departments, arms-length bodies and the wider public sector, get better value for money from their purchasing in categories of goods and services where multiple public sector organisations have the same requirement in common. It does this in a number of ways, particularly:

- By putting in place commercial agreements (Framework Agreements and Dynamic Purchasing Systems as permitted under the Public Contracts Regulations 2015)<sup>3</sup> which leverage the public sector's collective buying power and enable fast, effective and compliant procurement from capable suppliers in those categories by public sector organisations (who we refer to as 'customers').
- By deploying expertise in certain categories of goods and services to shape and understand markets and advise public sector customers.

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2015/102/contents/made>

- By providing an assisted procurement service, primarily but not exclusively, to central government departments, running “call-off” procurements primarily from CCS framework agreements on their behalf.<sup>4</sup>
  - By developing digital solutions and platforms which simplify and facilitate the public procurement process.
20. CCS operates in c.80 categories of goods and services. These categories are currently grouped into four pillars:
- Technology which includes, for example, hardware, software and networks.
  - People Services which includes, for example, consultancy and contingent labour as well as executive search.
  - Buildings which includes, for example, construction, facilities management and energy.
  - Corporate Services which includes, for example, financial services, office supplies and logistics.
21. The scope of the categories which CCS operates in is not strictly defined as CCS must be flexible to adapt to the developing requirements of the public sector and the emerging offer from the supply market. The principal driving factor will be that the category of good or service is common to multiple public sector organisations. [ST/6 - ST\_CCS00000008] The principle on which CCS operates is that it aims to establish commercial agreements in those categories of goods or services where multiple public sector organisations have the same or similar requirements in common. This is because, this way, CCS commercial agreements can leverage the aggregated spend volume of the combined public sector organisations requiring the good/service in question to secure better terms and pricing for all public sector organisations using them and because the agreements can expedite the public procurement process compliantly for those organisations.
22. By using CCS commercial agreements to procure, public sector organisations benefit in a number of ways in addition to gaining price benefits:

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<sup>4</sup>[https://www.crowncommercial.gov.uk/?gclid=CjwKCAiAzp6eBhByEiwA\\_gGq5Ko60yNry2Sg5Cend3iiwHBF424gkLVI19ofe0xdpSGEzF3w30bNGRoCe04QAvD\\_BwE&gclidsrc=aw.ds](https://www.crowncommercial.gov.uk/?gclid=CjwKCAiAzp6eBhByEiwA_gGq5Ko60yNry2Sg5Cend3iiwHBF424gkLVI19ofe0xdpSGEzF3w30bNGRoCe04QAvD_BwE&gclidsrc=aw.ds)

- they can purchase their requirements more quickly and easily than if they had to run a full procurement process themselves;
- they can take assurance that CCS has established the agreement in line with procurement regulations and government policy bringing to bear its specialist category expertise; and
- they can take assurance that the suppliers available to them via CCS agreements have been tested through a robust procurement process, are capable of fulfilling the requirement and meet other relevant required standards (e.g. policy or regulatory standards) for public sector contracts.

23. Having described what CCS does, it is also important to make clear what CCS does not do and to explain the limits of its operational function. CCS does not purchase goods and services itself for distribution to the public sector and consequently does not operate any storage facilities or distribution services. CCS acts as the contracting authority for the overarching commercial agreements it puts in place. Individual public sector organisations are the contracting authorities for the call off contracts they put in place using CCS's commercial agreements and they manage those contracts themselves. There is no obligation on a public sector organisation using a CCS agreement to notify CCS that it has done so. CCS collects data on the usage of its commercial agreements from suppliers that are obligated to report the business they win from CCS agreements.

24. CCS does not as a general principle operate in categories where the specialist category knowledge and requirements sit only, or primarily, in another public sector organisation or group of organisations with a particular specialism<sup>5</sup>. For example, CCS does not involve itself in the procurement of military equipment or medical and clinical equipment. In both the health and defence sectors, there are specialist organisations that enable the collective procurement of these more specialist goods and services and that work with defence and health sector organisations to procure and provide access to those goods and services. Defence and health organisations

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<sup>5</sup> There is an exception to this general principle in CCS's workforce category. In 2019, CCS established a partnership arrangement with an NHS procurement body (NHS Procurement in Partnership) known as the [Workforce Alliance](#). This alliance puts in place commercial agreements primarily to enable access to suppliers of temporary and flexible resources for both healthcare roles and non-healthcare roles.



may and do use CCS commercial agreements for equipment that is not specialist to their sector however e.g. office supplies.

25. Over the last 5 years, CCS has successfully pursued growth in the volume of public sector spend transacted through its commercial agreements as a means to increase its impact - measured in the commercial/price benefits obtainable by the public sector from using CCS deals to procure vs market comparators. In 2022/23, CCS is forecasting c. £30bn to be transacted through its commercial agreements, up from £13bn in 2017/18, enabling public sector organisations to achieve c. £3bn commercial benefits up from £600m in 2017/18.
26. Our ambition is to increase the value that CCS helps public sector organisations achieve from procurement, by sustainably increasing the depth of our impact and the breadth of our coverage.
27. CCS's strategic priorities are to:
  - Grow its coverage and influence - attracting more of the public sector's procurement spending to its commercial agreements and using its specialist category and procurement expertise and position to shape public sector buying and the supply market;
  - Deepen its impact - by improving the effectiveness, relevance and accessibility of its commercial agreements for its users and targeting its expertise and services where they will add most value; and
  - Enable better outcomes - by ensuring its commercial agreements and services explicitly enable and serve its customers' policy, social and economic goals as well as price - e.g. SMEs, modern slavery, carbon net zero.
28. We are delivering these three priorities through our key interventions - product, service and customer:
  - Product: CCS manages a portfolio of products (framework agreements and DPSs) that it makes available to public sector organisations. These are developed from CCS category strategies and are designed to drive price as well as key social, economic and policy outcomes. We enhance our portfolio by developing digital platforms and solutions to simplify the user journey for accessing and using these agreements.

- Service: CCS provides an assisted procurement service to central government departments aiming to undertake transactions worth c. £2bn per year in 2022/23 on their behalf. The value of transactions undertaken by CCS's assisted procurement service rose during the Pandemic to £2.4bn in 2020/21 and £4.5bn in 2021/2022.<sup>6</sup> CCS teams provide advice on buying effectively in our categories and guidance on engaging the market and mobilising suppliers on specific transactions or projects. We also work with key suppliers - primarily in the technology sector in categories such as software licences - to negotiate volume price reductions for public sector organisations formalised in memorandums of understanding ('MoUs') with individual suppliers; and we run aggregation events and e-auctions in relevant categories - such as fleet and technology products - to help public sector organisations get the best possible deal.
- Customer: CCS aims to be a customer focussed organisation. We are using our data and insights to develop a sophisticated - segmented - understanding and approach to engaging with the thousands of public sector organisations that can use our agreements so that we continuously improve the products and services we offer. And we're using partnerships to extend our reach and positively influence more public sector procurement activity.

### **Commercial Agreements**

29. CCS operates a portfolio of c.80-100 live commercial agreements at any one time (depending on expiry dates and replacement plans). These consist principally of two types of agreements:

- A framework agreement established in accordance with Regulation 33 of the Public Contracts Regulations 2015 (c. 60-70 live agreements).
- A Dynamic Purchasing System established in accordance with Regulation 34 of the Public Contracts Regulations 2015 (c. 20-30 live agreements).<sup>7</sup>

<sup>6</sup> <https://www.gov.uk/government/publications/crown-commercial-service-annual-report-and-accounts-2021-to-2022/ccs-annual-report-and-accounts-2021-to-2022-accessible-version>

<sup>7</sup> <https://www.legislation.gov.uk/uksi/2015/102/regulation/34/made>

### *Framework Agreements*

30. A framework agreement is a general term for a commercial arrangement between a public sector contracting authority (often but not exclusively a central purchasing body<sup>8</sup> such as CCS) and one or more suppliers of specified goods or services which establishes the terms of specific purchases ('call-offs') which can be made throughout the term of the agreement.
31. Framework agreements are an effective tool to ensure public sector organisations with similar requirements can achieve value for money, as they enable the public sector to leverage its scale to drive competitive prices and better value. The more demand/volume that is channelled through a particular framework agreement, the more competitive suppliers will be in order to secure a place on it.
32. Framework agreements must be put in place through fair and open competition under a fully regulated procurement process in line with the Public Contracts Regulations 2015. These procurement processes test suppliers' capability and their ability to fulfil the requirements of the framework agreement specification through evaluation of suppliers' submissions using relevant price and quality criteria. A typical framework agreement procurement process run by CCS can take 2 years to complete from the date the mandate is agreed to the award of suppliers to the agreement. Once the framework agreement procurement process has been completed, CCS - as the contracting authority awarding the framework (also known as "the framework authority") - awards places on the framework agreement to the successful suppliers.
33. The establishment of the framework agreement does not constitute a commitment that public sector spending will be transacted through it or that any of the suppliers awarded a place on the framework agreement will receive public contracts as a result.
34. Once the framework agreement is in place, 'call offs' can then be made from the framework agreement by any public sector buyer without the need for the full regulated procurement process to be repeated each time, saving time and money and improving procurement efficiency across public sector organisations. Depending on the procurement process required by the framework agreement, the complexity of the purchase, and the governance of the organisation that is the contracting authority

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<sup>8</sup> A 'Central Purchasing Body' is the term used in the Public Contracts Regulations 2015, Regulation 37, to describe an organisation that undertakes central purchasing activities such as the procurement of framework agreements and DPSs which can be used by other contracting authorities.

for the call off, a call off contract can be compliantly established within 1-2 weeks. The amount of time taken to run a call off process by CCS's assisted procurement service is normally c.6-8 weeks.

35. Framework agreements are normally let for a maximum of 4 years (though may be renewed more frequently as the market changes), in which time no new suppliers can be added. Framework agreements of different lengths will be suitable for different categories and markets and are the culmination of commercial strategies for a particular category of goods and services designed by CCS's category specialists. Where markets are more dynamic and new products, services and solutions are being developed (e.g. technology), the framework agreement is normally re-procured more frequently (e.g. every 9-12 months) – testing (maximum) prices and enabling new suppliers and solutions to be easily available to public sector organisations.
36. Framework agreements typically set out the maximum prices, the quantities envisaged, how 'call off' contracts will be placed by the individual public sector organisation making the purchase and the duration of the framework. The framework agreement may be organised in 'lots' with suppliers awarded a place on one or more specific lots within the framework where the requirement is more narrowly specified. For example, CCS's Management Consultancy Framework has separate lots for Finance consultancy and HR consultancy. Most CCS framework agreements allow public sector buyers to put in place 'call off' contracts up to seven years in length. Call off contracts can therefore continue to run once a framework agreement has expired. The Public Contracts Regulations 2015 allow the framework terms to be set such that they provide users of the framework with the option of running a further competition between suppliers that have a place on the framework agreement (or lot of said agreement) or selecting a supplier for direct award.<sup>9</sup>

#### *Dynamic Purchasing Systems*

37. Under the Public Contracts Regulations 2015 an electronic procurement tool - known as a Dynamic Purchasing System (DPS) - can also be put in place. DPSs are different to standard framework agreements in that they must be operated 'electronically' and enable suppliers to be added to the agreement during its term based on certain predetermined eligibility criteria rather than as a result of a full open procurement

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<sup>9</sup> <https://www.crowncommercial.gov.uk/buy-and-supply/agreements/direct-award/>

competition. Unlike a framework agreement however, individual public sector organisations are required to undertake a competition between suppliers on the DPS before awarding a contract through it. DPSs are often put in place by CCS where flexibility in responding to the market is paramount. They are not suitable in every circumstance/category as the increased flexibility can diminish the competitive tension achieved through the standard framework procurement process. But DPSs are particularly valuable in those categories where the market is continually evolving and new suppliers, frequently SMEs, are providing new and innovative solutions. An example of a DPS is CCS's Vehicle Charging Infrastructure Solutions (VCIS) agreement. This agreement offers public sector organisations access to products and services that support vehicle charging infrastructure, such as charge points. Buyers can purchase a full end-to-end solution or specific elements to support the transition to low emission vehicles.

#### **Preparedness for a National Emergency or Pandemic**

38. As part of the Inquiry Team's request, I have been asked to comment on how, between 11 June 2009 and 21 January 2020, CCS prepared itself for public procurement in the event of a whole-system civil emergency and, specifically, a pandemic. In answering that question, understanding the matters which I have outlined above as to how the CCS works and operates is essential, and it is for that reason that I have gone into some detail on those points.
39. In the period to January 2020, CCS's framework agreements and the category and procurement services provided by CCS teams were deployed at times to support other public sector organisations in responding to, or preparing to respond to, urgent or emerging situations. In reality there had been few examples where this was needed from the CCS, given their function as described above, but two examples I can give were the preparations for no-deal Brexit and the collapse of Carillion. CCS as an organisation had gained some experience, therefore, of organising its products and services to respond to urgent demand prior to the Pandemic.
40. CCS was not, however, directed to prepare for public procurement in the event of a whole-system civil emergency and, specifically, a pandemic prior to January 2020. CCS operates in categories of goods and services that are, by definition, routinely required by multiple public sector organisations as part of business as usual and

where the market is well established. CCS was not tasked either with procuring, or with establishing commercial routes for other parts of the public sector to procure, specific goods or services in anticipation of a whole system emergency or goods or services which were specific to an individual public organisation or clearly specialist to a particular sector. In that regard, I repeat the points made at the outset of my statement that the procurement of such specific or specialist goods or services was principally undertaken by the procurement teams of those organisations or by dedicated procurement organisations in those sectors and not by CCS. Accordingly, CCS had no policy or business justification to deploy resources on establishing and maintaining commercial agreements in categories of goods and services where no demand or common requirement existed or, in the case of PPE for medical or clinical contexts, which were outside its remit. CCS had no strategic responsibility for determining preparedness for a whole system emergency. The Civil Contingencies Act 2004 (CCA 2004) is the extant guidance for Government in dealing with civil emergencies. The Act refers to Category 1 responders (most likely to be involved - blue light) and Category 2 responders (known as cooperating bodies - utilities, transport, H&SE). As CCS is not considered within either of those categories this helps to explain our position regarding preparedness.

41. CCS commercial agreements can be used effectively to procure urgent requirements that sit within the scope of those agreements because a call off process from an agreement can be completed quickly and compliantly when required. This is often preferable compared to contracting directly with a supplier outside a framework - as is permitted under the Public Contracts Regulations (Regulation 32) without prior notice in urgent circumstances - because the contracting authority gains the benefit and assurance of procuring from suppliers that have been selected by CCS and have agreed to standard terms and maximum pricing. CCS can, and does, procure new commercial agreements in response to demand. However, to do so effectively requires a thorough understanding of the good or service in question and a thorough understanding of the market and of the requirements and priorities of potential users of that agreement. It can take several months to run engagement with potential suppliers and buyers and carry out a full procurement process. A CCS framework agreement can take up to 2 years to establish from inception to award. Whilst it is possible to shorten this timespan considerably to as little as 3-6 months, procuring new commercial agreements should be considered a medium-term response to an ongoing and well understood requirement. In the event of an emergency, CCS expected, therefore, to contribute to addressing the situation primarily because of the

commercial agreements it had available and because of its ability to support public sector organisations to procure quickly and effectively in the categories in which it has expertise.

42. To ensure CCS could itself function effectively in challenging situations, prior to the Pandemic, CCS had put in place business resilience protocols. At CCS's formation it implemented a Corporate Business Continuity and Incident Management Plan [ST/7 - ST\_CCS00000003]. Following a review of these arrangements in 2016, a CCS Business Continuity Framework (BRF) was developed and has been maintained since. [ST/8 - ST\_CCS00000002] [ST/9 - ST\_CCS00000004] I do, however, emphasise that these addressed CCS's ability to continue to function as an organisation and did not seek to assess how CCS would support the public sector in reacting to an external or country-wide emergency or pandemic.

### **Fraud & Abuse Prevention**

43. I am further asked to outline how CCS prepared itself to ensure that any public procurement would not be subject to abuse such as fraud. In responding to this element of the request, I will go into further detail as to the legal context within which CCS operates and the establishment and operation of commercial agreements by CCS.

### ***Regulatory Framework***

44. As a public sector body, CCS is required to operate in accordance with the Public Contracts Regulations 2015 which require all public procurement to be undertaken in a manner that is fair and open. Like other central government bodies, CCS also operates in accordance with policy guidance issued by the Government Commercial Policy team which, since 2018, has been part of the CCT reporting to the GCCO in the CO.
45. The Government Commercial Policy team is responsible for issuing Procurement Policy Notes (PPNs) which clarify or provide further instruction on the regulations and help to ensure specific risks to effective public procurement are addressed. For example, in February 2019, the Cabinet Office published PPN 1/19: *Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing*

[ST/10 - ST\_CCS00000006] and an accompanying *Guide for Commercial and Procurement Professionals* highlighting the provisions in the regulations which cover mandatory and discretionary grounds for excluding suppliers; and which address the requirement to manage conflicts of interest through the procurement process and protect whistle-blowers. Another example are the series of PPNs and accompanying guidance relating to Transparency principles published in 2015 and updated in 2017 which set out the expectations of central government bodies and their suppliers with regard to transparency and accountability. The full list of PPNs are published and available on gov.uk<sup>10</sup>.

46. From its inception, CCS had established and periodically refreshed standard operating procedures and processes to ensure that its commercial agreements were designed and procured in compliance with these regulations and relevant PPNs. For example, CCS's standard operating procedure for managing a framework procurement requires all communication with suppliers will be conducted via its e-sourcing platform (including notification of outcome) so ensuring a robust audit trail and that all suppliers engaged in the procurement process receive the same information. [ST/11 - ST\_CCS00000016]

### ***Design Process of Commercial Agreements***

47. The design and development of CCS commercial agreements was and continues to be undertaken by CCS category teams that engage with both suppliers and customers to gather insight on the optimum approach to the market and the specification of the commercial agreement. Since 2019, decisions on the design of a commercial agreement have been managed through the development of a series of business cases which are subject to scrutiny in a gated process overseen by CCS's Commercial Agreement Advisory Approval Board (CAAAB), [ST/12 - ST\_CCS00000011] made up of managers drawn from across CCS's business and chaired by the Director of Procurement Operations. This gated process was put in place to ensure that all CCS agreements are quality assured; that there is a robust audit trail of decisions taken on their design and construction before they are procured; and to ensure that the pipeline of CCS agreements is maintained, reducing the risk that CCS would need to extend an agreement beyond its term. Once the design of a commercial agreement has been completed, responsibility for procuring

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<sup>10</sup> <https://www.gov.uk/government/collections/procurement-policy-notes>



the commercial agreement moves to CCS's procurement operations directorate, which manages the tendering process through to the final award of places on the agreement to successful suppliers. The CAAAB process and the separation of duties between category and procurement teams ensures transparency and challenge at all stages of the design and development of a commercial agreement and ensures the tendering process is robustly managed by procurement specialists.

### **Supplier Assurance**

48. As well as running a compliant process, CCS also seeks to gain assurance on the suppliers which may be contracted through its commercial agreements. Before being awarded a place on a CCS commercial agreement, suppliers must indicate and, where relevant, provide evidence that they meet the required qualification criteria and are subject to certification checks. During the commercial agreement tendering process CCS require suppliers to make self-declarations in up to 17 mandatory or discretionary exclusion criteria. If, through declaration or verification, a supplier is unable to meet the criteria pass threshold then they will be excluded from the tender. For the period referenced in this request CCS used the Dun & Bradstreet Failure score as the measure by which a supplier's financial health was assessed.<sup>11</sup> Failure to meet the specified threshold would result in further risk analysis of the supplier's accounts, utilising a financial assessment template completed by the supplier. If, upon further analysis, the financial risk assessment indicated the supplier to be a high risk, they would be excluded from the procurement process. Where appropriate, a mitigating action may be utilised, such as a guarantor, which would allow the supplier to continue in the procurement process.
49. Once live, CCS's commercial agreements are managed on an ongoing basis by CCS's category teams. [ST/11 - ST\_CCS00000016] Checks may then be repeated on a periodic basis in line with the terms of the agreement. Suppliers which are found to have breached the terms of the agreement, including providing inaccurate or false information, may be suspended from the agreement or excluded in accordance with the exclusion provisions set out in the Public Contracts Regulations (Regulation 57). CCS also monitors suppliers on its commercial agreements, using Dun & Bradstreet Failure scores to assess risk of supplier failure, and, where thresholds are exceeded,

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<sup>11</sup> The introduction of the Cabinet Office Sourcing Playbook (published May 21) saw the implementation of the Financial Viability Risk Assessment (FVRA) tool by CCS.

trigger supplier suspension. CCS commercial agreement managers also collect other sources of information on the performance of suppliers on the agreement and where necessary support customers in escalating and addressing performance issues where they are occurring across multiple contracts.

### **Support to Buyers**

50. CCS commercial agreements set out a compliant process through which public sector organisations can call off those agreements and establish a contract with a supplier for their specific requirements, whether through direct award or further competition among suppliers on the framework. This contract will be between the individual public sector organisation as the 'Contracting Authority' for that individual contract and their chosen supplier. As the contracting authority for the 'call off' contract, it is each public sector organisation's responsibility under the regulations to ensure they are procuring compliantly.
  
51. CCS does not retain oversight of transactions undertaken through its agreements and public sector organisations routinely undertake call-off procurements using CCS commercial agreements on a 'self-serve' basis without engagement or contact with CCS. CCS seeks, however, to provide support to organisations that use its commercial agreements by providing guidance on how to buy using each agreement and where relevant referring them to other sources of information on the required approval process and best practice. For example, the published "Customer Guidance" for CCS's Management Consultancy 2 framework agreement [ST/13 - ST\_CCS00000009] which ran from 2018-2021 highlighted a range of steps buyers should consider including:
  - Government Spending controls set by the Minister for the Cabinet Office and each organisation's internal controls
  - Selection of evaluators including addressing conflicts of interest
  - Taking legal advice
  - Using Direct award <sup>12</sup>

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<sup>12</sup> [assets.crowncommercial.gov.uk/wp-content/uploads/RM6008-MCF2-Customer-Guidance-1.pdf](https://assets.crowncommercial.gov.uk/wp-content/uploads/RM6008-MCF2-Customer-Guidance-1.pdf)

52. CCS also provides an assisted procurement service primarily to central government departments under which CCS teams undertake the 'call-off' process in accordance with standard and compliant operating procedures. Although CCS teams run the operational process, responsibility for the call-off procurement remains with the individual public sector organisation that is the contracting authority for the call off. Through each stage of the procurement the contracting authority must provide their sign off to proceed and ultimately agree to the terms and conditions for that call off. The contracting authority, and not CCS, is the signatory to the call off contract.

### ***Counter-Fraud Initiatives***

53. CCS has also taken steps to ensure it is active in addressing fraud risks across its activities. In 2019 the CCS Audit Committee adopted Government Internal Audit Agencies Government Counter Fraud Standards (GovS013). [ST/14 - ST\_CCS00000015] A programme was then established to upgrade CCS's Policies and Procedures to comply with GovS013 standards. In November 2019, a report by the CO Cross Government Fraud, Error, Debt and Grants team assessed the adequacy of CCS internal Counter Fraud processes. Of the overall 12 criteria reviewed under the standards, 8 were met (GREEN) and 4 (AMBER) were partially met.<sup>13</sup> To further support and operationalise the adoption of GovS013, from November 2019, CCS appointed a Counter Fraud Officer [ST/15 - ST\_CCS00000013] reporting to the CCS Finance Director and linked to the cross Whitehall Counter Fraud community. The appointment of this officer enabled an organisational focus on counter fraud activity. Since October 2021, metrics have been applied to tendering processes (e.g. tracking of disqualified suppliers) as well as analysis of activity to counter bid rigging. Fraud activity has been captured and tracked on a Counter Fraud Bribery Risk Assessment. And all CCS staff have been required to undertake mandatory counter fraud staff training. Through these initiatives CCS has been able to strengthen its approach to managing fraud risk.

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<sup>13</sup> All measures were rated green by June 2022

## **The Role of the CCS in the Pandemic Response**

54. CCS supported public sector organisations in a number of ways through the Pandemic, providing category advice, helping to mobilise suppliers and enabling public sector organisations to procure their requirements quickly and effectively, primarily using CCS commercial agreements.

### ***Specific Examples of CCS work***

55. Despite the fast evolving and unexpected nature of events, examples of the areas where CCS teams were active in supporting other public sector organisations in the first 6 months of 2020 included:

- (a) Urgent category & procurement support: CCS helped a range of government departments reach commercial arrangements with suppliers and fulfil immediate needs, notably in:
  - (i) procuring consultancy and contingent labour
  - (ii) making arrangements with airlines for repatriation flights
  - (iii) accessing hotel accommodation for quarantine & for rough sleepers
  - (iv) accessing modular buildings, facilities management and security
  - (v) accessing IT equipment for home working
  - (vi) establishing Voucher arrangements for schools
- (b) Actively managing demand and supply challenges:
  - (i) CCS's consultancy and contingent labour teams worked alongside Civil Service HR within the Government Resourcing Hub to match supply and demand for resources;
  - (ii) CCS's technology teams monitored and reported on demand across government for a range of technology –

but particularly the kit (laptops, mobile phones, Wifi devices) and the network services required to enable effective home working.

- (c) Steering the government's approach to key sectors. CCS category teams engaged with suppliers and other government departments to help them understand the implications of government policy in the Pandemic, in particular, in relation to:
  - (i) the payment of contingent labour;
  - (ii) the terms for workers in the FM sector and the construction industry;
  - (iii) use of electronic payment cards with extended limits.

### ***Supplier Offers***

- 56. CCS also provided practical support to DHSC and other departments, by operating a first line triage service with the CCT in CO to channel and review the thousands of offers of support to government from businesses and individuals and identify how they might be logged and if relevant deployed. As part of this process, CCS took responsibility for handling non-medical offers of support, while working with the CCT to ensure offers of PPE and other medical/clinical equipment or services could be passed to a DHSC led process for consideration. As required, CCS also mobilised additional support to DHSC to enable them to contact and triage an accumulated backlog of supplier offers.

### ***PPE Procurement***

- 57. CCS did not involve itself directly in procuring Personal Protective Equipment for use in clinical settings (referred to hereafter as 'PPE'). At the outset of the Pandemic, in February 2020, CCS was made aware that the Department of Health and Social Care ('DHSC') and specialist health procurement agencies – in particular NHS Supply Chain Coordination Limited ('NHS SCCL') – had pre-existing responsibility for coordinating procurement in this category and understood that they would continue

to do so. CCS supported a common view within the GCF that public procurement and allocation of PPE should not be fragmented but led by DHSC and NHS SCCL. This was to ensure that the PPE stock already accumulated by the start of the Pandemic and engagement with a complex and globally constrained supply chain could be managed and controlled as effectively as possible; and to ensure that demand for PPE within public sector organisations would be met in accordance with an order of prioritisation determined by DHSC and the NHS and in line with their expert knowledge of the requirement and specification.

58. As a result, rather than risk disrupting the health sector's efforts to secure PPE supplies, CCS did not seek to establish new alternative commercial routes for health or indeed other public sector organisations to access PPE, but rather responded to calls from the GCF to provide support to central DHSC and NHS procurement efforts, making available those of its staff with knowledge of protective equipment specifications and the supply chain in non-medical / non-clinical categories such as the construction sector.
59. CCS also sought to help understand and manage demand for PPE from the public sector. Because of CCS's engagement with the whole public sector on procurement of common goods and services, CCS was contacted by a range of public sector organisations at different points during the Pandemic to help them access PPE. CCS sought to help DHSC gauge the level of demand emerging from public sector organisations outside the health sector on the one hand and on the other to communicate to those organisations the importance of following guidance when it became available on what type of protective equipment was advised in non-clinical contexts, prioritising health sector demand and not disrupting or competing in the same supply chain as the health procurement effort in light of the ongoing global supply constraints.

### ***Test & Trace***

60. From May 2020, CCS provided support to the DHSC Test, Track and Trace initiative in particular in relation to its procurement of Contact Centre suppliers. From summer 2020 CCS took steps to establish a defined support model through which we could work with the new Test and Trace organisation within DHSC, and through which that organisation could access CCS category advice, support in identifying the right

commercial routes as well as operational support for procurement in CCS's categories of goods and services.

61. In March 2021, CCS reviewed its work on Test and Trace, highlighting a number of achievements from the engagement including:
- Mobilising contact centre suppliers for shielding, mass testing and vaccination programmes;
  - Undertaking assisted procurements and completing Transparency and other process obligations on existing contracts for T&T;
  - Enabling workforce mobilisation for T&T itself as well as for laboratories, mobile processing and vaccinations;
  - Mobilising suppliers in the set up and operation of the first mass testing pilot in Liverpool and subsequent access to mass testing infrastructure and support services;
  - Mobilising suppliers for the distribution and delivery of tests to labs; and
  - Enabling the procurement of converted and fitted out vehicles to provide mobile testing units.
62. CCS continued to offer support to the successor organisation to Test & Trace, the UK Health Security Agency, for its common goods and services requirements through 2021.

### **Reflections & Lessons Learned**

63. In light of the wide-ranging challenges faced by public procurement during the Pandemic and the wide-ranging roles that CCS teams played in supporting the response to those challenges, it is difficult - even with the benefit of hindsight - to be definitive about what preparations could or should reasonably have been made in advance by CCS given that its role was to provide commercial routes to procure common goods and services in established markets.

## ***The Boardman Reports***

64. In December 2020, Nigel Boardman completed a review of CO Communications Procurement during the Pandemic. This review referred to the role of CCS in providing an assisted procurement service to the CO and included recommendations for CCS along with the CO departmental commercial team that reports to the CO Chief Operating Officer. Mr Boardman's report contained 28 recommendations in total of which two were directed at CCS, namely:
- *CO to work with CCS to ensure business units in CO have a clear understanding of the use of subcontracting under tools such as Dynamic Purchasing Systems (DPS) and to apply this consistently across CCS's work with other departments.*
  - *Review of the roles between the different parts of the CO business units, Central Commercial Team<sup>14</sup> and CCS.*
65. CCS accepted these recommendations and worked with the CO departmental commercial team to implement them in early 2021.
66. On 7 May 2021 a second review by Mr Boardman was published. This review examined Covid-19 public procurement more generally [ST/16 - ST\_CCS00000010] exploring similar themes but expanded to cover five key parts of the government's response to the Pandemic. These areas (PPE, ventilators, vaccines, test and trace and food parcels for the clinically extremely vulnerable) had been identified in previous reports, such as those by the NAO, as being areas where there may be lessons to be learned for the future in terms of the way in which procurement was done.
67. In relation to the specific role of the CCS, Mr Boardman recommended that *"The Crown Commercial Service should review whether and how best to broaden the scope of its products and services in a crisis situation to maximise the impact of its skilled resources. This review should be carried out in conjunction with the relevant contract authority or department at the time."*
68. In making this recommendation, the Boardman report noted that *"there are lessons to be learnt regarding how to maximise support to new programmes, which may*

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<sup>14</sup> In Mr Boardman's first review, 'the Central Commercial Team' refers to the Cabinet Office's departmental commercial team not the Central Commercial Teams (CCT) reporting to the GCCO.



*include expanding the remit of those commercial teams and organisations best placed to undertake specific activities,”* and commented that interviewees for his report were “*unclear on the separate roles of the Central Commercial Teams in the Cabinet Office and CCS.*”

## **Reflections**

69. I accepted Mr Boardman’s recommendation with some caveats, and CCS’s contribution to the CO response to the Boardman recommendations was set out in a draft policy note submitted to the CO and reviewed by CO internal auditors in November 2021. This policy note has informed my reflections.

### *Decision making with limited information*

70. At various points as the Covid-19 pandemic unfolded, CCS considered how best to deploy its capacity and capability: in providing emergency and ongoing support to departments to set requirements and engage suppliers across our range of categories of goods and services; in making resources and operational capacity available to support DHSC; and in dealing with the tens of thousands of non-medical supplier offers. It had however to undertake these considerations with limited information.
71. CCS’s executive board initiated an emergency command structure in the early days of the Pandemic establishing a drumbeat of regular and frequent executive board level meetings and putting in place an Operational Command Centre group at manager level from across the organisation to gather intelligence on requests for support and to manage the reallocation of staff from business-as-usual functions to urgent priorities. In this way, CCS’s executive gathered information on emerging challenges and requirements from both central government and the wider public sector and reached decisions quickly on re-focussing capacity. This approach enabled CCS to quickly de-prioritise activity and free up resource in anticipation of increased demand for key elements of CCS’s existing products and services e.g. by delaying renewing framework agreements, both procurement and category resource were released to provide category advice to departments and undertake additional call off activity for departments where required.

72. CCS were adept as a result at responding to a very broad range of urgent, immediate and tactical challenges. As outlined above, CCS provided tactical support to several major initiatives across government by deploying category expertise and mobilising suppliers. It also enabled CCS to re-prioritise resources on a new 'service' - specifically triaging and responding to the unusually high volume of non-medical supplier offers coming into departments and Ministers' offices across government prompted by Ministers' calls to arms.
73. It is clear that at the start of the Pandemic, CCS's executive did not however have information on the fundamental commercial and procurement capacity and capability challenges being faced, not least by the NHS, NHS SCCL and DHSC. Had CCS had greater clarity on these challenges earlier, it would have been better placed - having assessed with stakeholders the impact of ceasing other critical activity - to make a timely risk-based decision on offering to occupy an alternative or more strategic role alongside DHSC from the outset.

#### *Clarity on roles and responsibilities*

74. CCS is one part of a wider ecosystem of roles, responsibilities, capability and capacity across the GCF, which includes departmental commercial teams as well as the CCT in the CO. There are also large commercial and procurement organisations which operate at arms-length from their parent departments - notably NHS SCCL which had pre-existing responsibility for medical PPE procurement; NHS Shared Business Services ('NHS SBS') which provides procurement services to the NHS; and Defence Equipment and Support ('DE&S') an organisation many times the size of CCS.
75. From a CCS perspective and with hindsight, the way in which responsibilities and accountability for different parts of the commercial response to the Pandemic evolved was opaque and/or not sufficiently widely communicated, making it difficult to ascertain where the opportunity or the requirement for support lay. To achieve optimal choices on scope and where to expand, CCS and indeed other organisations should be mobilised as part of a coordinated response to a crisis situation from commercial, procurement and other operational teams across government.
76. The way in which CCS engaged with the Test and Trace organisation from Mid 2020 reflected our intention to learn from the experience at the start of the pandemic and gain both better information on the fundamental challenges health sector bodies were

facing and define clearly with them the role that we could play in supporting their activity. Consequently, CCS was active in seeking a defined working relationship from the outset with the fledgling Test & Trace organisation from mid-2020 and promoting the support CCS teams could provide. My reflections in response to the Boardman report drew on these different experiences of CCS teams at different points in the Pandemic and with different organisations.

### **Reforms**

77. In anticipation of a future whole system civil emergency, and to further enhance the manner in which CCS could support other organisations with their operations, I would propose procedures are established that will:

- 1) Ensure CCS (along with all other relevant organisations) are fully informed as early as possible on strategic challenges resulting from the emergency; and
- 2) Build and communicate consensus within the GCF, across Government Functions, and across Departments on the nature and scope of the crisis, the role of the different organisations and the structures and decision-making processes that should be established (alongside or instead of existing governance) to maintain clarity and consensus.

78. As a result of the recommendation in the Boardman report on Pandemic Procurement, CCS worked with the CCT and other government departments to develop a series of proposed actions in the event of future crises to enable the procedures outlined above. [ST/17 - ST\_CCS00000017] They are:

*Action 1: In the event of a crisis, CCS will seek early and ongoing intelligence from the Civil Contingencies Secretariat and the CCT with which to assess what strategic role it might play in the potential required commercial response. CCS will expect to gain an initial view from Civil Contingencies within 72 hours of making an inquiry.*

*Action 2: CCS will support the CCT in developing a structured response for future crises for the GCF. This should include assessment of the scale, nature and scope of an emerging crisis and proposals for differentiated levels of response, including, where relevant, additional governance and decision-making structures.*

*Action 3: In the event of a crisis, CCS will engage with the GCF and the Civil Contingencies Secretariat and other stakeholders to determine potential requirements for new commercial routes. Where a CCS route is available, that should be the default route to procure. Where a new commercial route is required, CCS will coordinate with the CCT and relevant stakeholder departments to access intelligence on the category, market and demand.*

*Action 4: In the event of a crisis, CCS will engage with the GCF and the Civil Contingencies Secretariat to establish demand for its assisted procurement and category advice services; and consider where relevant how it might prepare to augment its capacity. Where a new service is required, CCS will reach a justifiable decision on whether to undertake it based on whether it aligns well with the capability within the organisation, whether there is any better placed organisation and whether it is likely to add more value than providing existing core services.*

79. CCS is considering with the CCT and other parts of the GCF how a structured response to future emergencies for the GCF might be defined, bringing together lessons from the Pandemic and subsequent situations in which urgent public procurement has been required.

**Final remarks:**

80. Given the period of time that the CCS has had to respond to the inquiry's request, it has endeavoured to provide as much information as possible in response to the relevant issues raised within the R.9 request posed.

**Statement of Truth**

I believe that the facts stated in this corporate statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Personal Data

Signed: \_\_\_\_\_

Dated: 20.02.2023

## **APPENDIX: KEY ORGANISATIONS**

### ***The Government Commercial Function (GCF)***

The GCF is a cross-government network consisting of resources deployed in commercial departments or teams within each of the central government departments and their arms-length bodies, Crown Commercial Service (CCS) and the Central Commercial Teams (CCT) in the Cabinet Office (CO). It numbers some 4,000 staff. The Function is headed by the Government Chief Commercial Officer (GCCO). The Government Commercial Function is one of the Civil Service Functions.

### ***Government Commercial Organisation (GCO)***

The GCO is the employer of senior commercial professionals (at Grade 7 and above) within the GCF. It is coordinated by a central operations team - one of the CCTs in the CO - and is headed by the GCCO. The central operations team delivers the administration and services of the GCO i.e. commercial resourcing and development, Learning and Development, Talent, and Reward. Senior commercial professionals are employed by the GCO and are deployed within government departments, working on commercial contracts. They can also be deployed across government to support the most critical contracts.

As with other parts of the GCF, CCS's senior commercial professionals are recruited and employed by the GCO and deployed into CCS. CCS pays the GCO the staff costs for these staff which includes CCS's Chief Executive, Procurement Operations Director, Chief Commercial Officer and Pillar Directors.

### ***Government Chief Commercial Officer (GCCO)***

Reporting to the Chief Operating Officer of the Civil Service and the CO Permanent Secretary, the GCCO shapes and leads the programme of commercial reform across government. The CCTs report to the GCCO.

### ***Central Commercial Teams (CCT)***

The CCT is the collective title given to the teams which sit within the CO and report to the GCCO. They include:

- GCCO private office, supporting the GCCO in his various roles.

- Strategy, Assurance and Standards - responsible for Commercial Assurance / Controls, Standards, Benchmarking and Masterclasses.
- Commercial policy - responsible for the reform of Public Contracts Regulations, providing procurement policy advice to Ministers and issuing Procurement Policy Notes and other guidance to the public sector.
- Markets, Suppliers and Sourcing - responsible for Playbook Implementation, Market Health Analysis, Strategic Supplier management and the Crown Representative Programme.
- Complex Transactions responsible for providing expert support for high value negotiations and disputes
- Commercial Capability - responsible for attracting, retaining, developing, accrediting and rewarding senior commercial staff in GCO and in the wider public sector.