

UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT IN THE MATTER OF: THE PUBLIC INQUIRY TO EXAMINE THE COVID-19 PANDEMIC IN THE UK

WRITTEN SUBMISSION, FIRST PRELIMINARY HEARING – MODULE 5, GOVERNMENT PROCUREMENT

UK ANTI-CORRUPTION COALITION, and PARTNERS

Hearing Date - 6th February 2024

This submission is provided by the UK Anti-Corruption Coalition (UKACC), and its partners in advance of the Inquiry's Module 5 preliminary hearing on Tuesday 6th February 2024, pursuant to the Counsel to the Inquiry's Note dated 19th January 2024.

- 1.** UKACC and its partners welcome and appreciate the Chair's acceptance for our inclusion as Core Participants (CP) as part of the United Kingdom's Covid-19 Inquiry, Module 5, "Government Procurement". This group includes:
 - a. Centre for Health and Public Interest (CHPI)
 - b. Chris Smith (Procurement Expert)
 - c. Open Contracting Partnership (OCP)
 - d. Spotlight on Corruption (SpOC)
 - e. Transparency International UK
 - f. UKACC Coordinator
- 2.** UKACC brings together the UK's leading anti-corruption organisations working to reduce corruption in the UK and its role in facilitating corruption abroad. Our Procurement Working Group (PWG) consists of several expert organisations with detailed national and international expertise. Members of the UKACC, and partners, have already undertaken investigations into the emergency procurement of Personal Protective Equipment (PPE), and patient capacity from private sector hospitals. We look forward to adding our voice and sharing our evidence and expertise to support the Inquiry's investigation into the UK and devolved governments' management of government procurement, and helping to identify important lessons.
- 3.** We think the proposed scope of the key questions listed in the CTI is a solid basis for the Inquiry to investigate both the governance and the performance of public procurement during Covid-19. Below, we share some suggestions for additions to the scope of Module 5.

Scope of Module 5

- 4. Frontline impact:** We are pleased to see the Inquiry's emphasis on recognising the impact that procurement decisions had on the frontline provision of goods, as well as on the probity of the application of the rules themselves. It is important for the Inquiry to fully consider the profound impact that government-level decisions had on the ground-level emergency response and on frontline responders, including the lack of PPE for healthcare staff leading to makeshift replacements including binbags, which has been well documented nationally, and experienced directly by family members within our CP team.
- 5. Lack of basic commercial acumen:** We believe the Inquiry should investigate what appears to be a systemic lack of basic commercial acumen and adherence to key guiding principles of public procurement. Usually, in a normal procurement process, very clear technical specifications provided by the contracting authority would lead the procurement process for PPE. However, this does not appear to be the case for the UK's emergency response, which relied on supplier's specifications and offers forming the basis of contracts, thereby creating a gap between the items supplied and the procurers' actual requirements. This would seem to account for the extraordinarily high rate of failure and waste in UK contracts, of which £8.7 billion of the PPE inventory has been written down, including some £670 million spent on defective equipment, £750 million on PPE that was past expiry date, and £2.6 billion on unsuitable supplies - all according to the House of Commons debate on PPE on 22nd February 2022.¹ We would welcome the scope being updated to include a thorough investigation into how effective the government's diligence processes were and whether they were applied with consistency prior to the award of contracts. We believe that the payment terms for many contracts created a significant financial risk for taxpayers and that the Inquiry should examine whether the financial arrangements involving unsecured advance payments, worth many hundreds of millions of pounds, were necessary.
- 6. High Priority Lane response was unique to UK:** We are particularly troubled by creation of a high-priority (VIP) lane for PPE contracting and how the policy emerged as a core feature of the UK procurement policy response. Our members work in over 30 different countries around the world and note that this VIP approach was unique to the UK. One of the key purposes of procurement rules is to keep undue political influence away from government commercial decision-making; close connections to a politician normally are cause for more scrutiny of a contract, not less. There is no evidence that politicians anywhere were particularly well placed to decide who has stocks of PPE and who does not. There were plenty of routine and sensible approaches - such as using an overarching PPE framework with rapid qualification of suppliers and call-off that were successfully applied in other jurisdictions such as Canada. Most countries managed to procure PPE whilst maintaining due process. In Sweden, Slovakia, Estonia, and Latvia, the number of contracts awarded using open competition actually went up during the pandemic. We believe it is very important that the Inquiry discovers exactly how and why the VIP Lane was created and what

¹ <https://hansard.parliament.uk/Lords/2022-02-02/debates/275119A9-7A17-4450-ABB5-902B619D7227/PersonalProtectiveEquipmentAccounting>

other more effective emergency response options were considered and rejected by the government.

We also hope the Inquiry will consider the many harmful consequences of the VIP Lane, including the ways it distracted from other offers of supply from less connected but more credible providers of PPE, delayed the publication of critical information and contracts, and may have deterred efforts to hold underperforming or substandard suppliers accountable, resulting in huge amounts of waste. We hope that the Inquiry will consider performance outcome comparisons between the normal route of supply and the VIP Lane.

- 7. Systematic failure to disclose basic information on emergency PPE contracts:** As the pandemic began, supply chains were totally disrupted and there was a global scramble for PPE. Live, accurate information on the location and price of PPE stocks would be incredibly valuable to coordinate an emergency response. In other countries, like Ukraine, emergency contracts were negotiated and concluded directly, with the information published within 24 hours. Conversely, in the UK, the normal 30 & 90 day periods for publication of information, required by procurement regulations and policies, collapsed completely, with contract award notices for PPE worth £4.7 billion not published until 14 months after contracts were awarded. We hope the Inquiry will consider how this failure to share basic information might have hindered the ongoing procurement of PPE.

We remain concerned about the lack of public disclosure for many of the contracts worth many billions of pounds that were awarded without competition. A large value of PPE contracts remains unpublished, and contracts that have been published are incomplete, lacking detail on the items procured, or are heavily redacted. There is a risk that the government could rely, as it often does, on commercial confidentiality to avoid full disclosure of important contract documents to the Inquiry. The government may also be particularly reluctant to release correspondence or documents for several contracts where the government are in commercial discussions, undertaking legal reviews, or has commenced litigation, which has been estimated by DHSC to be worth £1 billion. As a result, we fear that the Inquiry may not have access to much of this important documentation and will be unable to fully investigate what happened to them and what lessons can be learned.

- 8. Use of digital procurement tools:** The Module's scope should include the digital tools e.g. the NHS Supply Chain PPE Portal, or e-procurement systems, that were available for the procurement of items, and the role of procurement data in managing the whole process across government, which involved over 300 different government organisations. Many other jurisdictions quickly built dashboards to track PPE availability and contracts. For example, Lithuania's Public Procurement Office (PPO) was able to identify an increasing number of untested suppliers, overpriced protective equipment, and risky high-value direct awards.² What tools and approaches could the UK have taken? This is especially important to inform the

² <https://www.open-contracting.org/2021/03/30/buy-open-buy-fast-how-open-contracting-helped-lithuanias-coronavirus-response/>

ongoing digital tools that the UK is currently considering as part of the new UK Procurement Act 2023.

- 9. Consider impact and implementation of Boardman and other reviews:** Following concerns expressed in Parliament and the media about the transparency and competence of the UK's emergency procurement response, multiple official reviews were conducted. For example, the Cabinet Office Chief Operating Officer asked Sir Nigel Boardman to conduct a fact-finding exercise into the award of contracts for Covid-19 communications services made by the Cabinet Office in March 2020, and to identify any areas for improvement and recommend further actions to address issues based on these results.³ Similarly, there were key reviews conducted by the National Audit Office⁴ and Public Accounts Committee.⁵ We would like to see the Inquiry investigate what impact these reviews, and their recommendations, had on government departments' behaviour and the procurement of equipment.
- 10. Quality assurance:** We believe the Inquiry should investigate the considerable waste to physically dispose of the PPE that was not fit for purpose and what could have been done to identify quality problems before PPE was distributed and subsequently found to be unsafe to use. We believe that the lack of pre-shipment inspection for many PPE contracts was reckless, particularly considering that payments do not appear to have been contingent on inspection either prior to shipment or on arrival in the UK. These may have been major contributory factors to large quantities of PPE being paid for, but being unusable, which the Inquiry should investigate.
- 11. Scope beyond the NHS:** We would also like to raise a point regarding the scope of the Module which we feel should not be restricted to the NHS and the care sector. Instead, it should additionally include GPs and other front-line primary care services.
- 12. Procurement of services.** The Module should also include the procurement of services such as, for example, contracts surrounding test and trace centres which involved the provision of testing services as well as lateral flow tests. Many contracts were awarded in this space with no competitive tenders. The UK Parliament's Public Accounts Committee reported that Ministers and government officials played "fast and loose" when awarding over £700 million in Covid-19 contracts to a healthcare firm.⁶ The Committee noted that it was impossible to know if the contracts had been awarded properly.
- 13. Use of private hospitals:** The Module's scope should include the procurement of capacity from private hospitals. Private hospitals were paid around £2 billion to help the NHS during the first year of the Covid-19 pandemic. Whilst we recognise that

Module 3 will examine this issue from the perspective of the health service response, we consider it important that Module 5 addresses the way in which the contract between NHS England and the private sector was struck, how the private healthcare companies became party to the contract - some of whom had never delivered any NHS care before - and whether public funds were properly used. These are all issues relating to government procurement processes which are separate from the contribution made by the private sector to the health service response.

14. Nightingale Hospitals. The Module's scope should include similar procurement of goods, works, and services for the Nightingale Hospitals and their equivalents in the devolved nations.

29th January 2024

Peter Munro representing the UK Anti-Corruption Coalition and Partners