
Written Submission 27 November 24

on behalf of

THE SCOTTISH GOVERNMENT

Introduction

1. The Scottish Government thanks the Inquiry again for its designation as a Core Participant in Module 5. It re-affirms its commitment to assist the Inquiry as it continues its important work in this module.
2. This investigation into the procurement and distribution of key healthcare related equipment and supplies during the pandemic will form another key part of the picture in considering the overall systemic response to the Covid-19 pandemic.
3. The Inquiry will be aware from the evidence heard in Modules 2, 2A and 3 that one of the ‘special health boards’ in Scotland, NHS National Service Scotland (“NSS”), held delegated responsibility for the vast majority of procurement, supply and distribution of PPE and other healthcare related equipment during the pandemic. NSS was, of course, ultimately accountable to the Scottish Government. Moreover, as the Inquiry will hear, the Scottish Government played an important role in setting procurement policy and strategy, working to support NSS in a variety of ways and by securing and allocating necessary funding.

Draft List of Issues

4. The Scottish Government is grateful to the Solicitor to the Inquiry and Counsel to the Inquiry for their notes circulated in advance of the preliminary hearing. The Scottish Government seeks to make only one

observation on the Draft List of Issues. This relates to the question of the securing and allocation of funding, particularly in the first phase of the pandemic.

5. The Inquiry will note that some statements from Scottish Government witnesses, notably the now Deputy First Minister Kate Forbes, make reference to issues that arose due to the urgent need to procure key healthcare equipment for Scotland in a situation where the UK Government was not guaranteeing ‘consequential’ funding that might pay for it. This was compounded by the lack of a mechanism to formally request emergency or additional funding over and above any funding that would be generated in the normal way through the Barnett Formula. While the issue of consequential funding was ultimately resolved over the summer of 2020 and a settlement agreed going forward, the Scottish Government had been left with budgetary uncertainty and managing significant financial risk for several months during the already challenging initial phase of the pandemic.
6. The Scottish Government notes that §5 of the Draft List of Issues asks:

Were the institutions, structures, systems and tools in the UK and devolved administrations adequate, adaptable and effective for the procurement and distribution of key healthcare equipment and supplies during the pandemic?
7. We also note that CTI’s note at §23(b) makes reference to “contract terms, advance payments and risk” when discussing the topics that might be explored within the themes of the module.
8. The Scottish Government considers that, while it might be possible to fit the issue raised in Ms Forbes’ statement into these issues/topics, neither squarely addresses the adequacy of arrangements for accessing emergency funding for procurement purposes. We submit that the availability of a formal mechanism for the Scottish Government (and the

Devolved Administrations generally) to request and access emergency funding from the UK Government to support procurement in a pandemic situation is an important matter for this module to consider.

9. The Scottish Government therefore respectfully invites CTI to consider whether the Inquiry is satisfied that this issue is adequately covered by the Draft List of Issues as framed. If not, we respectfully ask that the Draft List of Issues be adjusted accordingly to note that §5 includes the availability of a formal mechanism for the Devolved Administrations to request and access emergency funding from the UK Government to support procurement.

Other matters raised in CTI's Note

10. The Scottish Government note all the other matters raised in CTI's note but have nothing to add.

Conclusion

11. As ever, the Scottish Government is eager to take the opportunity presented by this Module to learn from the evidence, to identify what could have been done better, and to improve government decision-making for the future.

27 November 2024

G. D. Mitchell, KC
Michael Way, advocate

Counsel for the Scottish Government

Instructed by Caroline Beattie, Scottish Government Legal Directorate