

**IN THE MATTER OF THE INQUIRIES ACT 2005 AND IN THE MATTER OF THE INQUIRY**  
**RULES 2006**

**THE UK COVID-19 INQUIRY**

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OPENING STATEMENT ON BEHALF OF THE CABINET OFFICE FOR MODULE 5  
(PROCUREMENT)

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**A. Introduction**

1. The Cabinet Office (including No10, though we will abbreviate to the Cabinet Office throughout) remains committed to assisting the Inquiry's investigations across all modules. The Cabinet Office continues to provide assistance both to ministers from the previous administration and to current and former civil servants, so as to ensure that the Inquiry is provided with the best evidence on which to reach its conclusions and to support any lessons to be learned for the future.
2. The Cabinet Office has provided extensive material to assist the Inquiry's investigations in this module. This has included three detailed written corporate statements, from Gareth Rhys-Williams (then the Government Chief Commercial Officer (GCCO)), Clare Gibbs (currently the joint interim GCCO and Director of Markets, Sourcing and Suppliers) and Mark Cheeseman, Chief Executive of the Public Sector Fraud Authority (PSFA). These statements are supplemented by significant disclosure of other relevant materials and by our support for a number of individual witnesses both at these oral hearings and with their individual statements.
3. This brief opening statement seeks to offer some context about the market conditions in which procurement was taking place during the pandemic, to provide some factual details about the procurement structures within government that operated at the time, and the Cabinet Office's role within those structures, and to outline key procurement activity that took place, ending by highlighting improvements that have been, and which could be, made in this area.
4. The Cabinet Office recognises that there has been significant public interest in procurement during the pandemic, including allegations of fraud and cronyism. The Cabinet Office takes these allegations seriously and is keen to receive the Inquiry's findings. The Government is also committed to introducing a duty of candour on public authorities as a catalyst for a changed culture in the public sector to improve transparency and accountability, and has appointed a Covid Counter-Fraud Commissioner, which we talk about further below. We would encourage the Inquiry to consider the changes the Government is already making when formulating its recommendations, both in this module and Module 9 which will consider related topics, in particular fraud.

## **B. The scale of the challenge**

5. By way of broad context, as the Inquiry has heard through other modules, the scale of the challenge posed by the pandemic was unique in peacetime. This included the need for the Government to source very significant volumes of key goods and services with extreme urgency in an environment of considerable international market disruption and competition. For example, up to twenty times the normal volume of PPE was needed. Commercial professionals across government, working under pressure, bought essential equipment for frontline health and social care workers, and enabled a national testing network to be set up from scratch. It should also be recognised that procurement activity from that time covered by Cabinet Office staff went beyond the key healthcare related equipment and supplies which are being considered as part of this module. For example, laptops for schools; food packages for those shielding; the vaccine; and other areas of the Test and Trace system not covered in this module.
6. As is explained in the Cabinet Office corporate witness statements, those working on the government response were aware of the desperate need for ventilators and PPE in the first months of the pandemic in order to save the lives of patients, doctors, nurses and others. When PPE was scarce and being sought across the world, they worked to secure what deals were made known to them, in order to allow the NHS to continue to function. There were pressures on them to reassure ministers, the press and the broader public that the system was working and that they were moving with speed, and that pressure to give feedback was reflected in the working arrangements in particular of the PPE buying cell. We address those arrangements in brief below.

## **C. Structures, roles and responsibilities**

7. The Cabinet Office is the home of the Government Commercial Function (GCF). The Crown Commercial Service (CCS) is part of the GCF (and an executive agency of the Cabinet Office). The Cabinet Office is also home to the Complex Transactions Team, which provides an internal consultancy service to government departments. During the pandemic (as now) the GCF was led by the GCCO, who is based in the Cabinet Office. The Cabinet Office is also the home of the Public Sector Fraud Authority (PSFA).
8. The GCF is a cross-government network of commercial staff based in all departments, who procure or support the procurement of goods and services for the public sector. It is one of thirteen cross-government functions, several of which have their headquarters in the Cabinet Office. The GCF comprises around 6,000 staff across government departments and the CCS. In addition, during the pandemic around 300 staff, many of whom were commercial professionals, were based in the Cabinet Office reporting to the GCCO. Many of these staff were deployed to support procurement in other departments. This included a team of 35 specialists within the Complex Transactions Team. This team proved central to the Cabinet Office's response during the pandemic, working on multiple initiatives including leadership for procurement in the Ventilator Challenge, PPE and testing.
9. Since 2016, the GCF has enhanced the training and professional development offered to all commercial staff in government. In addition, senior GCF staff are

required to be accredited by the GCF's Assessment and Development Centre (ADC) at the relevant level in order to demonstrate their commercial competence. Although based in departments, this leadership group is centrally employed by the Cabinet Office. This large cadre of (circa 1,000) experienced and qualified staff was available to be redeployed when the call to provide extra resources to pandemic buying teams came. This 'functional' model of the GCF enabled the Government to mobilise experienced commercial staff to the areas of greatest need. For example, commercial staff from departments and public bodies were moved into roles in PPE buying within the Parallel Supply Chain set up by the Department for Health and Social Care (DHSC) and in the Vaccine Taskforce.

10. The work undertaken by the department and members of the GCF was wide in scope, carried out at great pace by staff working in improvised and usually virtual teams and facing unprecedented market conditions. This activity supported our ability to combat the virus, supported the NHS, and ultimately, helped protect the public.
11. As explained in more detail in our corporate statements, ministers and officials from the Cabinet Office had key roles in forming and executing the Government's procurement during the pandemic:
  - 1) First, Cabinet Office Ministers, including the Prime Minister, with support from officials, provided a strategic response to the pandemic which set priorities and allocated resources.
  - 2) Second, the Cabinet Office, as the department responsible for procurement policy, provided the public sector with prompt guidance on policy applicable to emergency procurement.
  - 3) Third, the Cabinet Office directly led one element of procurement activity as the contracting authority – the Ventilator Challenge. The decision making structures were described in detail in the Cabinet Office's evidence to Module 2. Individual departments however would generally take responsibility for decisions which fell within their department's ambit, so that it was, for example, DHSC which remained the contracting authority for PPE and for Test and Trace procurement (UKHSA later became the contracting authority for tests).
  - 4) Fourth, commercial staff employed by the Cabinet Office were re-deployed from their normal role to support DHSC and the NHS on other key elements of interest to the Inquiry, including PPE and testing. This was enabled by the functional model of GCF which could assist in the redeployment of skilled personnel across departments.

#### **D. The regulatory background**

12. Public sector procurement is required to be carried out in accordance with the Public Contracts Regulations 2015 (PCR). It was apparent at the outset of the pandemic

that the time needed to execute competitive procurement procedures in the PCR<sup>1</sup> in many cases would not enable the Government to procure urgent items or services at the pace required. For example, a competitive dialogue procedure typically takes months (and can often take years) to complete. The Cabinet Office issued a Procurement Policy Note (PPN 01/02) in March 2020, explaining the options available – in accordance with the regulations – to the public sector in order to procure correctly at the necessary speed. These options included the use of accelerated procedures (where time permitted), the use of existing frameworks (where there was a relevant framework with a sufficiently large financial limit) and the use of the flexible emergency procurement procedure provided by Regulation 32 of the PCR, which allows direct awards of contracts for cases of extreme urgency brought about by unforeseeable events, where the usual time limits for other procedures cannot be complied with; exactly the situation the UK found itself in when competing with other countries to obtain globally scarce PPE. As events unfolded it was frequently necessary to rely on Regulation 32 in order to obtain significant volumes of goods and services from domestic and international suppliers, particularly when time was limited because the small amount of available stock would otherwise be sold to competing countries. The PPN also outlined how to open up new sources of supply while managing the additional challenges around risk and value for money that these new relationships presented.

## **E. Operational response**

### **E.1 Ventilators**

13. First, with regard to ventilators, the Cabinet Office led and was the contracting authority for the Ventilator Challenge, an initiative to design and build new ventilators in the UK. Immediately prior to the pandemic there were no intensive care ventilators made in the UK. In March 2020 DHSC anticipated that up to 90,000 patients might need them (while the NHS had stocks of around 7,000 ventilators). In parallel with DHSC's efforts to acquire ventilators worldwide, a number of companies with experience in developing medical technology were tasked by the Cabinet Office with designing a simple mechanical ventilator that could be made in the UK. These design companies were paired with manufacturing partners who could rapidly scale-up production.
14. By the end of March 2020, the first manufacturing contracts were signed, and in April 2020 a new production line was being commissioned at a factory in Sweden. The initiative delivered 15,000 ventilators for use in the NHS within 4 months of inception, compared to the 3-7 years typically taken to design and approve new products. The Cabinet Office corporate statements draw attention to the collaborative spirit of this endeavour, with the shared objective between suppliers being to overcome the significant technological and supply chain challenges and provide increasingly sophisticated ventilators that met regulatory standards.

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<sup>1</sup> i.e. the open, restricted, negotiated, competitive dialogue, and competitive procedure with negotiation (and the much less used, innovative partnership) procedures which are available under the PCR.

## E.2 PPE

15. The Cabinet Office expects that a key focus of the hearings in Module 5 will be on the procurement of PPE during the pandemic and specifically what has become known as the High Priority Lane (HPL). The formation and operation of the HPL is described in detail in the Cabinet Office's corporate witness statements. Given the Inquiry's keen interest in this area, this statement briefly summarises some of the context for its formation and operation.
16. In March 2020, it became clear that the amount of PPE likely to be needed by the health and social care sector in the UK would rapidly exhaust the pre-pandemic stock holding and the supply chains of the suppliers who had been used before the pandemic. These suppliers, primarily wholesalers, struggled to fulfil existing orders and could not respond to the sudden and enormous leap in demand triggered by the need to protect health and social care workers and patients. In addition, the existing systems and structures of the principal buying organisation, SCCL, were not designed to cope with the influx of personnel needed to deal with the many new suppliers that had made offers. DHSC set up a Parallel Supply Chain to radically increase the capacity of existing arrangements.
17. A Cabinet Office team of commercial professionals was deployed to set up the buying arm of the Parallel Supply Chain – the PPE Buy Cell – around 21 March 2020. Reporting to DHSC, this team quickly grew to almost 800 people including over 50 from the Cabinet Office. More than 18 billion items of PPE were ordered in 15 weeks of operation<sup>2</sup>.
18. The Parallel Supply Chain had four buying streams, which were (1) the existing supply base of SCCL, which had supplied PPE to the NHS before the pandemic; (2) the 'China Buy' stream, which set up contracts directly with Chinese companies following introductions made by the Beijing embassy; (3) a 'UK Buy' stream which processed offers from suppliers or intermediaries who approached HMG directly; and (4) a 'UK Make' stream which sought to set up onshore manufacturing of PPE. The first three of these streams were managed by the PPE Buy Cell.
19. The 'UK Buy' stream received thousands of offers from individuals and companies from all over the world. The UK was required to look to new suppliers to respond to the need including some who had no track record in supplying PPE. These potential suppliers were instructed to fill in a webform. The number of offers quickly exceeded the capacity of the PPE Buy Cell to process them (some 3,000 by 7 April 2020, and 25,000 over the 15 week period of the Buy Cell). Many such suppliers, some frustrated by what they saw as delays in processing their offers, appealed to their MPs, to ministers and to DHSC and NHS officials directly, and this resulted in requests for follow-up. Those MPs and senior officials who had been contacted by suppliers often in turn contacted the Buy Cell to find out what had happened to the offer. In a situation where the availability of PPE might mean life or death for individual hospital workers, or might prevent a hospital ward from functioning,

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<sup>2</sup> 39 billion items of PPE ordered by DHSC overall. 18.2 billion does not include UK Make or SCCL buying, and is taken from 10 August 2020 DHSC Purchase Order summary (see the first Cabinet Office Corporate Witness Statement, paragraph 4.490)

referrers, (like the press and general public), wanted to know that good offers were being picked up and processed. The pressure of responding to these requests was taking up significant resources within the Buy Cell. These two routes – direct email and the webform – were in place at the beginning of April. The direct email route became what is now known as the HPL, which, in addition to checking opportunities, worked as a handling team to respond to such requests and absorb such pressure.

20. There has been a significant amount of criticism of the HPL and suggestions made that it was a method for ministers' associates to obtain contracts improperly. This is dealt with at length in the Cabinet Office's corporate witness statements. Cabinet Office acknowledges that the judgement given by Mrs Justice O'Farrell in the 'Pestfix' judicial review proceedings brought against DHSC considered the question of whether there had been unequal treatment by use of the HPL. The judgement stated that the use of the HPL breached equal treatment rules, although also that the specific offers considered in the judicial review (from Pestfix and Ayanda) would have very likely resulted in the award of contracts, whether on the HPL or not, based on the merits of the offers. It will obviously be for different witnesses to explain their view of the HPL and for the Inquiry to reach its own conclusions on their evidence.
21. The Cabinet Office invites the Inquiry to consider the detailed evidence of what happened and notes the following key points from its corporate witness statements at this stage.
  - 1) First, the HPL and non-HPL were both methods of entry into the Buy Cell. They constituted only the first stage – an initial check or 'opportunities' stage – where data on the offer was collated, it was screened to see if it was worthy of consideration, and then passed on. Where 'opportunities' received by the HPL were considered worthwhile they were then passed through technical assurance and subsequent processes and approval. These stages were independent of the HPL and applied to both HPL and non-HPL opportunities. Procedures were put in place to ensure that HMG was paying appropriate market prices for all goods, albeit much higher than pre-pandemic, and GIAA analysis showed that the prices in HPL contracts were not systematically higher than non-HPL ones.
  - 2) Second, a range of people referred offers to the HPL, including parliamentarians from the majority party at the time as well as other parties, doctors, union officials and health service managers. The majority of referrers of companies subsequently awarded contracts were officials, largely working in the DHSC, SCCL or the NHS with others in the FCO, DIT or DFID. The majority of referrers who were parliamentarians were ministers or other individuals whose role it was to work on the healthcare or PPE response, and who might be expected to be contacted by suppliers who had good offers of PPE.
  - 3) Those cases on the HPL which obtained contracts did so because they passed Technical Assurance and were deemed to be selling needed goods for an appropriate price. Almost 90% of companies/individuals referred through this route were unsuccessful and the vast majority of offers on the

HPL did not get contracts, and whilst proportionately more offers on the HPL received contracts than those on the non-HPL, many of the offers on the non-HPL stream were of poor quality. The Cabinet Office sets out analysis of this in its corporate statement to Module 5 at paragraph 4.492.

### **E.3 Testing**

22. In March 2020, the effective capacity to perform COVID-19 tests in the UK was estimated at 3,000/day in practice. The Secretary of State for Health and Social Care set a goal to be able to perform 100,000 tests/day by the end of April 2020. A Cabinet Office based team of commercial professionals supported DHSC in buying equipment, consumables and services to achieve this goal, and provided commercial leadership for the embryonic NHS Test and Trace organisation until August 2020 when a Commercial Director was appointed. Many of this team continued to work with Test and Trace into 2021, helping to expand PCR testing capacity to 750,000/day by the end of 2020 and enabling nearly 700m Lateral Flow Tests – then a novel testing method for COVID-19 – to be distributed by May 2021.

### **F. Expert evidence**

23. The Inquiry has commissioned its own experts to provide their views on both procurement undertaken during the pandemic and the wider supply chains landscape. Although we have expressed some concerns about Professor Sanchez-Graells's expert report, we have welcomed the opportunity to provide comments on the draft reports of the appointed experts and would encourage the Inquiry to consider these comments in detail alongside the evidence that it will hear.

### **G. Lessons learned**

#### **G.1 Introduction**

24. As with previous modules, the Cabinet Office invites the Inquiry to consider work that has been undertaken since the COVID-19 pandemic when formulating recommendations in relation to Module 5.

25. In its corporate statements, the Cabinet Office has described the difficulties that its staff faced and the consequent impact on procurement including the following. First, the Cabinet Office staff experienced problems with data collection, particularly when deployed to the PPE Buy Cell, often as a result of a lack of integrated or common databases, which hindered procurement and took time to resolve. The difficulty of predicting demand during the early stages of the pandemic when cases were growing exponentially and later on when knowing usage rates and stock levels accurately would have resulted in lower levels of excess stock. Second, the lack of a stockpile adequate to the specific crisis, or of contact with overseas manufacturers, left the UK on the back foot. There were goods purchased which were identified after delivery as being non-compliant with the specifications. In 2022, the NAO noted that 3.6 billion PPE items procured by the DHSC were not suitable for front-line services, equivalent to 11% of all PPE it has received. Third, given the urgency and risk to life, the appetite for risk was much higher than would normally be accepted and speed was prioritised (though despite this the percentage of contracts which delivered conformant goods was higher than DHSC had anticipated). Fourth, the Buy Cell was challenged (and at times inundated) with an enormous number of offers of help, and

senior officials and politicians felt it necessary to make sure that offers were being followed up appropriately. Fifthly, delays in publishing contract notices reduced trust in the process.

26. A number of these issues were and remain outside the Cabinet Office's control and in any event, the appropriate solution for the future requires careful weighing up – for example, the costs of maintaining a ready stockpile at all times versus the cost of creating sufficient stock in response to a crisis. Recommendations for a crisis scenario should take into account such tensions.

## **G.2 The Boardman report and recommendations**

27. The second report undertaken by Nigel Boardman, published in May 2021, examined the Government's response to the pandemic in the procurement of five groups of products: PPE, ventilators, vaccines, test and trace and food parcels for the clinically extremely vulnerable. Sir Nigel made 28 recommendations in areas such as: embedding of documented and transparent decision making as part of all procurements across government; improving contingency planning for crises; guidance on procurement of products; coordination of resource and capability in the commercial function and across government procurement; and a review of stockpile requirements and management. In response to the report, a dedicated team was set up within the Cabinet Office to coordinate the implementation of these recommendations across government. By April 2024 all recommendations had been implemented, including two where implementation was ongoing.

## **G.3 Procurement regulation**

28. As a result of learnings gained from emergency procurement under the PCR during the pandemic, changes were incorporated into the Procurement Act (2023) to equip the Government to respond to future large scale emergencies effectively. This legislation reforms and in many areas simplifies the rules governing public procurement, including providing powers for ministers to introduce secondary legislation at times of emergency which would allow contracts to be awarded as though a direct award justification applies. The Procurement Act and subsequent secondary legislation has also introduced significantly strengthened transparency and conflict of interest obligations on contracting authorities to help combat fraud or preferential treatment. These obligations must be discharged prior to and during procurements, as well as during the subsequent operation of the contracts.

## **G.4 Tackling Fraud**

29. The pandemic changed the nature of the fraud landscape and prompted efforts to strengthen the Government's response to public sector fraud. In March 2022, the Chancellor announced funding for the creation of the PSFA. The PSFA was launched in August 2022, replacing the Centre of Expertise (CoEX), the previous centre of the Government Counter Fraud Function.
30. This Government of course takes any allegations of fraud during the pandemic very seriously. Some suspected cases of attempted fraud in PPE buying were referred to the DHSC departmental fraud officer and his team. Working with the DHSC fraud team, the Government Counter Fraud Function contributed to over £139 million in



savings to the taxpayer through the identification of fraudulent (including suspected) contracts which were then terminated or prevented from being signed. In addition, the Government Counter Fraud Function carried out a review of checks used in the PPE buying process at the beginning of May 2020.

31. In December 2024, the Government appointed Tom Hayhoe as Covid Counter-Fraud Commissioner, who will lead work to recover public funds from companies that took unfair advantage of government schemes during the COVID-19 pandemic, with an initial focus on PPE procurement.
32. Further, the Public Authorities (Fraud, Error and Recovery) Bill intends to safeguard public money by reducing public sector fraud, error and debt. To do so, the Bill includes powers to better identify, prevent and deter public sector fraud and error and enable the better recovery of money owed to the taxpayer where public money has been stolen or overpaid. The Bill also extends the limitation period for COVID-19 related fraud to 12 years.

#### **H. Conclusion**

33. Overall the nature and scale of the challenge that the pandemic presented to public procurement was unprecedented in peacetime. Responding to this challenge required a sustained effort by commercial staff across government to support the NHS in delivering services to the public. The Cabinet Office welcomes the opportunity to contribute evidence to this module and is keen to learn lessons that will enable an effective commercial response to any future such emergency.