
WRITTEN OPENING STATEMENT
on behalf of
THE SCOTTISH GOVERNMENT

Introduction

1. When the pandemic arrived on these shores, it led to an enormous surge in demand for key healthcare equipment and supplies. As demand grew, prices increased, shortages developed and supply chains strained to cope. As a consequence, the environment in which procurement agencies found themselves operating was unprecedented, as around the globe nations rushed to secure the materials necessary to protect their citizens. This context is important in arriving at a proper understanding of the response to the challenges faced. In Scotland, however, notwithstanding the obstacles, remarkable outcomes were achieved. In large part, this was due to robust, tried and tested public procurement processes, that had existed prior to the pandemic. In essence, Scotland entered the pandemic from a strong starting point.
2. Yet, that was not the only reason for the positive outcomes. From the outset of the pandemic, the Scottish Government sought both to develop new relationships, and to build on existing ones. It collaborated with and assisted its partners. It sought to innovate and to improve in areas as circumstances demanded. And it built on those procurement processes and systems that existed prior to the pandemic.
3. In this Opening Statement, therefore, our themes are collaboration, relationships, innovation and governance. These were the 'keystones' of the approach to procurement adopted by the Scottish Government. Before turning to specific issues that the Inquiry intends to examine in this module, we consider briefly the reflection of these themes in some of the events that occurred during the pandemic response. We explore these events in greater detail later in this Opening statement.

Collaboration, relationships, innovation and governance

4. The combined skills of the Scottish Government and NHS National Services Scotland ("NSS") (the body responsible for the procurement and supply of PPE throughout the NHS in Scotland), were critical to the response. The Scottish Government worked closely and effectively with NSS, as it did with a number of other public sector bodies. The Scottish Government also worked with Scottish manufacturers to produce PPE. By April 2021, 88% of PPE by value, excluding gloves, was manufactured in Scotland, often using Scottish raw materials. Further, Scottish Government Officials facilitated overseas procurement to maintain supply.
5. In March 2020, when primary care and social care providers were unable to source increased amounts of PPE from their regular private suppliers, the Scottish Government intervened. It temporarily expanded the remit of NSS to provide PPE to primary care providers and social care settings (including care homes and care-at-home). This was done for social care via a triage service and a series of localised 'hubs', with the aim

thereafter of local distribution. When in mid-April 2020 the pressure on the hubs became intense, and the demand within care homes for PPE grew, the First Minister, Ms Sturgeon, decided that the Scottish Government would work with NSS, to organise a one-off direct supply of PPE to around 1,100 nursing and care homes across Scotland.

6. In April 2020 the Cabinet Secretary for Health and Sport, Ms Freeman established a PPE Supply 'Helpline', that allowed any person in the NHS, who required PPE to which they were entitled according to clinical advice, to email her private office with a request.
7. A Scottish Government Working Group set up a dedicated mailbox. This allowed potential suppliers, who were willing to assist in the pandemic response, to indicate what they could potentially supply. In accordance with principles of good governance, all offers were 'triaged', before they were passed to NSS (who made the decision on whether to award a contract). In about mid-April 2020 NSS developed an on-line 'portal' that automated and streamlined the process of identifying suppliers' capabilities. There have been no suspicions or concerns regarding, nor instances of, fraud, in relation to procurement or award of contracts before, during or after the pandemic, in respect of any approach, bid or contact by the Scottish Government Procurement and Property Directorate. Audit Scotland concluded that the Scottish Government had applied the appropriate controls regarding new or extended Covid-19 procurement contracts, and found no evidence of preferential treatment or bias on the part of NSS in the awarding of contracts.
8. With this brief and thus necessarily selective overview, we turn to specific issues that the Inquiry intends to examine.

The Key Structures, Systems, and Processes for Procurement in Scotland

9. The Scottish Procurement and Property Directorate ("**SPPD**") sits within the Director-General Corporate. That Directorate is responsible for developing and maintaining a framework of Scottish public procurement legislation and policy. It also leads and delivers operational public procurement activities in Scotland at national, central government and Scottish Government levels. The Directorate is not responsible for setting sector or commodity specific policies, procedures, or approaches.
10. On 20 March 2020, the Directorate issued a national procurement policy note ("**SPPN**"), titled "*Coronavirus (Covid-19): procurement regulations for public bodies SPPN 4/2020*"¹, to remind those responsible for purchasing goods, services and works in the Scottish public sector of the compliant procurement routes to market. That SPPN, and existing legislation², recognised that, in exceptional circumstances, public bodies in Scotland may need to procure goods, services and works in extreme urgency. The SPPN provided information on options available to purchasers in such circumstances. The Directorate went on to issue two further policy notes (SPPN 06/2020 "*Coronavirus (COVID-19): making best use of procurement resources during COVID-19 outbreak (14 April 2020)*" and SPPN 8/2020 "*Coronavirus (COVID-19): recovery and transition from COVID-19 (12 June 2020)*"). The existing legislation and SPPNs underpinned the procurement of any goods, services, and works before, during and after the pandemic.
11. As Prof Sanchez-Graells notes in his report for Module 5, the key principles and legal

¹ INQ000485746

² Principally the Public Contracts (Scotland) Regulations 2015 or "**PCSR 2015**", but also the Procurement (Scotland) Regulations 2016 or "**PSR 2016**", the Utilities Contracts (Scotland) Regulations 2016 or "**UCSR 2016**", and the Procurement Reform (Scotland) Act 2014 or "**2014 Act**".

framework applicable before the pandemic remained stable and applicable throughout the pandemic. There was, at the time, generally close alignment between the Four Nations in terms of procurement law, policy and guidance. The Scottish Government worked collaboratively with the UK Government to maintain this alignment.

12. The procurement and distribution of PPE and healthcare equipment for the NHS in Scotland was, and is, delegated to a 'special health board', NSS. Amongst its other functions, NSS acts as a procurement arm for the whole of the NHS in Scotland. NSS has tried and tested procedures in place in respect of the due diligence of suppliers, as well as pricing, quality control, distribution, and supply of a wide range of medical supplies and equipment. It has longstanding, trusted relationships with a diverse range of suppliers. The main criteria used by NSS for assessment were price, product specification, lead times, incoterms (i.e. business-to-business practice in contracts for the sale and purchase of goods) and certification details. As the pandemic struck, there was therefore a robust procurement process in place. NSS and those processes continued to operate, albeit under extreme pressure due to unprecedented global demand. Health Boards were also able, on their own initiative, to procure additional PPE stock both before and during the pandemic.
13. In April 2020, in recognition of the developing situation, a new short-term Directorate for PPE was established within Scottish Government's Director General for Health and Social Care. The Directorate was led by Paul Cackette, to provide strategic and coherent coordination in relation to all aspects of the provision of PPE in Scotland. A "PPE Team" was established within this Directorate and, amongst other things, they led on the publication of the '*PPE Action Plan*'.
14. The Scottish Government's PPE Action Plan aimed to ensure that the "*right PPE of the right quality gets to the people who need it at the right time*". It set out the roles and responsibilities, at a national level, for procuring and distributing PPE, as well as the governance arrangements within the Scottish Government. The Scottish Government set up a PPE Strategy and Governance Board. This Board was responsible for overseeing the implementation of the PPE Action Plan. This included an action to improve evidence about the fit and comfort of PPE for different groups including women and ethnic minorities. It also supported opportunities to develop a Scottish PPE supply chain, and oversaw work around environmentally sustainable and reusable PPE.
15. The procurement and distribution of PPE in Scotland was enabled through networks, professional relationships, collaborations and levels of commercial professionalism. These were built up through a significant Procurement Reform Programme that started in 2006. As a result, contacts and relationships were already in place across all sectors that could be relied upon for sharing intelligence, suppliers' stocks, and distribution. This meant that those procuring PPE were already used to working within public sector procurement policy and legislation, as well as having well-established connections with technical and clinical experts, and with the people who were using the PPE procured.
16. During the pandemic, procurement of ICU equipment was undertaken by NSS in collaboration with the Scottish Government ICU Resilience and Support Group. This group provided central coordination and made key decisions on the distribution of ICU equipment to NHS boards. It facilitated coordination between key NHS organisations. It was also responsible for identifying Health Board ICU equipment requirements, Health Board requests for ICU equipment and supporting Health Boards with any issues in equipping their ICU beds.
17. In early March 2020, a working group was established by the then Minister for Trade,

Investment and Innovation, Ivan McKee, to offer support in relation to the sourcing of PPE and equipment relating to the pandemic (the “**Working Group**”). The Working Group comprised of representatives from the Scottish Government, NSS, Scottish Enterprise, Scottish Development International (i.e. Scotland’s inward trade and inward investment agency) and National Manufacturing Institute Scotland (which offers a network of world-class manufacturing research and development facilities). The goal of the Working Group was to identify potential sources of material and equipment required for the pandemic, with a primary focus on working with Scottish manufacturers to redirect or expand production, in order to support national requirements and, where necessary, to acquire PPE through international supply routes.

Governance, Transparency & Accountability

18. The Scottish Government relied upon pre-existing policies and the legislative framework to ensure transparency. Regulation 33 of PCSR 2015 and regulation 6 of PSR 2016 allow for the direct award of a contract without competition, and regulation 72 of PCSR 2015 allows for the modification of an existing contract without a new procurement procedure. The requirements to secure value for money to the extent permitted by marketing conditions, and to take active steps to avoid or mitigate abnormally high prices as far possible, were emphasised in the SPPNs. The normal rules about record keeping, transparency and guarding against conflict of interest (e.g. regulation 83 PCSR 2015) still applied. There is a documented and controlled approach in the Scottish Government to handling and publishing direct awards to underpin compliance with the legislation.
19. The use of these ‘emergency’ provisions within existing procurement legislation was necessary, and contributed to the speed at which the Scottish Government and NSS could implement their response. All procurement undertaken during the pandemic adhered to existing procurement legislation and policies, including robust ‘due diligence’ checks. There was some delay in NSS publishing some of the award notices within the required time period, as staff were working under extreme pressure. However, when they were published, the delayed notices had an additional note providing the reason for the delay.
20. As explained above, the Scottish Government was not directly responsible for buying key healthcare equipment and supplies for health and social care. In terms of procurement action undertaken by the Scottish Government, a framework contract was awarded to Lyreco to supply PPE to non-health or social care essential services, who had no or limited access to PPE. Scottish public bodies (outwith the NHS or the regulated care sector), registered Scottish charities and private companies employing staff undertaking essential public services, were all able to access PPE via this framework. Its aim was to assist essential workers who were struggling to access PPE. This contract was awarded under a non-competitive action. The initial contract period commenced on 26 May 2020, and ended on 31 October 2021, by which time PPE supply had stabilised and feedback from users confirmed their PPE supply chains were strong.
21. Lyreco was an existing and trusted supplier to the Scottish Government and had been subject to relevant due diligence checks previously. Lyreco also had a proven logistics model for distributing the PPE. Lyreco agreed to supply PPE on an “at cost” basis, making the contract good value for money. The Scottish Government PPE Directorate managed this contract on a day-to-day basis, having daily calls and receiving regular reports on the stock position. This contract ensured that essential services, such as funeral directors, had access to a stable supply of high quality PPE and could therefore continue to operate safely, if their usual supply routes collapsed.

22. In total, the Scottish Government incurred costs relating to PPE of £172.76m in 2020/21 and £79.6m in 2021/22. This covers the 'PPE Innovation Project', the Lyreco Framework, additional funding to NSS for PPE purchasing, additional funding to frontline NHS Boards and an inventory management system (although the 2021/22 figure includes £84.1m in a 'favourable accounting adjustment' due to the use of brought forward stock).
23. There have been no suspicions or concerns regarding, nor instances of, fraud, in relation to procurement or award of contracts before, during or after the pandemic, in respect of any approach, bid or contact by SPPD. In addition, no conflicts of interest by civil servants or Ministers were identified in the contracts managed by Scottish Government, relevant to the scope of Module 5. The Audit Scotland Scottish Government Annual Audit 2020/21 carried out an assessment of the arrangements in place at the Scottish Government to prevent fraud and corruption in the procurement function. The report concluded that the Scottish Government had applied the appropriate controls regarding new or extended Covid-19 procurement contracts.

Pandemic Stockpile

24. Prior to the pandemic, Scotland owned a PPE stockpile as a portion of the Pandemic Influenza Preparedness Programme ("PIPP"). The PIPP was a joint planning and procurement venture by the Four Nations to ensure there was an adequate stockpile of PPE items based on a 'Reasonable Worst Case' scenario for an influenza pandemic. The stockpile was based on an assumed pandemic wave of 15 weeks, after which normal procurement arrangements would be predicted to have recovered. Scotland (as with England, Wales and Northern Ireland) owned its PPE within the PIPP stockpile, but the procurement was coordinated by Public Health England on behalf of the Four Nations. Scotland's portion of the PIPP stockpile was stored in Scotland with a supplier contracted by NSS, Stanford Logistics Ltd. The Health Emergency Preparedness Resilience and Response Division, within the Scottish Government's Health and Social Care Directorate, liaised with UK counterparts on the procurement of items into the stockpile. On 18 March 2020, the Scottish Government delegated to NSS the authority to use items within the stockpile to respond to the pandemic. NSS then distributed this PPE to Health Boards and Independent Contractors. That stockpile was a vital part of the Scottish Government's initial response to the pandemic.
25. On the basis of the emerging challenge, the Scottish Government, NSS and other partners responded quickly to establish new supply routes to replenish the stockpile adequately as will be explained in further detail below. Supplies of some PPE items were stretched in the early months of the pandemic and there were some localised issues with the distribution of PPE, as noted below at §56. These challenges were ultimately overcome. As was explained in Module 3, Scotland did not "run out" of PPE at any point.
26. As part of the 'lessons learned' work carried out by the Scottish Government, NSS and other public sector bodies, there have been considerations around NSS leading procurement efforts in response to future surge stock requirements for health and social care and other sectors. In May 2022, the PPE Supply Implementation Board replaced the PPE Strategy and Governance Board in providing governance for the work of the PPE Team. The Supply Implementation Board's aim was to deliver robust cross-sectoral pandemic PPE provision in Scotland, to ensure a resilient supply is in place ahead of any future pandemic via the Future Pandemic PPE Implementation Project. There are high level proposals regarding access to the national PPE buffer stocks for health and social care and essential public service organisations during a health emergency. Further, plans

have been developed to enable public sector organisations with high use of “business as usual” PPE, to access PPE in both emergency and day-to-day situations on a collaborative procurement basis. This would help to increase stock rotation of the pandemic PPE stock, increase resilience by creating the critical mass of demand, and reduce waste.

Funding Challenges

27. At the start of the pandemic, at UK Government level, His Majesty’s Treasury (“HMT”) had agreed with the Department for Health and Social Care (“DHSC”) to provide funding on a Four Nations basis, to enable DHSC to procure and distribute PPE and other key health equipment for the whole of the UK. Since this was UK Government spending on behalf of the UK as a whole, no ‘Barnett consequential’ funding would flow to the Scottish Government as a result. It quickly became apparent to the Scottish Government that the speed and scale of the challenge faced by our NHS necessitated the procurement of key medical equipment and supplies over and above anything that might be distributed at a UK-level. In the absence of guaranteed funding from HMT, the Scottish Government required to bear the financial risk of this action. While the Scottish Government can manage limited financial risk, it cannot do so in the manner that the UK Government can.
28. Although the UK Government provided some financial flexibility meantime, it was not until summer 2020 that the issue of consequential funding was resolved and a settlement ‘going forward’ was agreed. The budget position did not delay procurement of PPE, but did leave the Scottish Government with budgetary uncertainty, and managing significant financial risk for several months during the already challenging, initial phase of the pandemic.
29. The lack of a mechanism to request formally emergency or additional funding, over and above any funding that would be generated in the normal way through the Barnett Formula, is a matter that may require to be addressed in the event of a future pandemic.
30. The Scottish Government entirely recognises the need to engage and work closely with partners across the UK, including in relation to mutual aid arrangements. The Scottish Government did, and will continue to, work effectively across the Four Nations in this regard. However, given NSS’ existing procurement expertise and knowledge of Scottish requirements, the Scottish Government is yet to be persuaded that the delegation of emergency procurement of PPE to a Four Nations body would bring tangible improvements. The experience of the practicalities of DHSC attempting this task during the pandemic suggest that any *theoretical* ‘upsides’ might not meet expectations.

Generating and Processing Supply Offers – Absence of a “VIP Lane” in Scotland

31. In the early months of the pandemic, a large volume of offers were received from potential suppliers, largely in relation to PPE. These were both unsolicited offers, and responses to the Scottish Government’s appeal to businesses for support. Some 2,767 emails offering supplies to support the pandemic response were received through the Scottish Government’s dedicated email address. A total of 2,047 offers were received by NSS, many referred from the Scottish Government, although only one progressed to securing a contract from NSS.
32. While there was a need to triage, manage and respond to these offers, there was no comparable system to the ‘VIP’ or ‘High Priority Lane’ in Scotland. In about mid-April 2020 an ‘on-line supplier offer portal’ was created by NSS to automate and streamline the process of identifying suppliers’ capabilities. NSS then internally checked for supplier and product performance. Where new suppliers were needed or came forward with offers, the standard tried and tested NSS procedures for due diligence, quality control and pricing

applied. NSS encouraged other bodies, such as Health Boards, to signpost offers to the portal to reduce duplication and concentrate efforts. NSS' established due diligence procedures were applied throughout the pandemic. The online supplier offer portal was decommissioned on 19 June 2020.

33. Of the 790 offers that passed NSS' initial checks, but were not deemed necessary for immediate health and social care requirements, the majority were passed to the Scottish Government to consider suitability for other public bodies. The Scottish Government engaged an Edinburgh-based company, SnapDragon Monitoring, to perform additional risk-based checks on these potential suppliers. SnapDragon Monitoring concluded that none of the offers were risk free, and so none were progressed to contract.
34. Additionally, as noted above, in March 2020 the Minister for Trade, Investment and Innovation, established the Working Group, *inter alia*, to identify potential sources of materials and equipment required for the pandemic, in particular from Scottish manufacturers. This led to the Working Group being approached by, and contacting, potential suppliers, such as distilleries offering to make hand-sanitiser gels, and textile manufacturers who could produce gowns. Initially offers were received via a dedicated mailbox. Prior to the creation by NSS of the on-line portal, the Working Group set up a system to triage and respond to offers, many of which were then passed on to NSS to apply their established processes, or were routed to National Manufacturing Institute Scotland for technical support. To mitigate against the inherent risks of awarding contracts to new suppliers, Scottish Enterprise and Scottish Development International carried out significant due diligence checks, such as visiting factories to see them first hand, including those based in China and the Far East.
35. Processing this large volume of offers was time consuming and, ultimately, led to a relatively small number of contracts. Most of the suppliers and manufacturers identified by the Working Group came through the established networks and account management relationships of Scottish Enterprise and Scottish Development International. However, the Scottish Government considered at the time that it was important to make a public appeal to Scottish businesses for assistance, and, having done so, to respond to those offers. Having the ability to deploy an established online supplier offer portal in the future will likely be of assistance in the event of a future pandemic.
36. As far as the Scottish Government is aware, no individual or company received preferential treatment in procurement or the award of contracts. As noted above, no concerns of fraud or conflict of interest have been identified in relation to Scottish Government procurement during the pandemic

Emergency Trade & Strategy

37. A key issue facing procurement of key healthcare equipment and supplies was that these items were either not produced in Scotland, or at the scale required. For ICU equipment most items are reliant on global supply chains.
38. The development of a domestic PPE chain was seen as a method of bolstering the resilience of Scotland's PPE supply by mitigating the risk of relying on global supply chains, particularly in a situation where exports were being stopped or interrupted by foreign governments. At the time, some PPE items were manufactured in the UK but on a relatively small scale (with attendant cost implications), and for other items, such as nitrile gloves, financial and logistical challenges meant that domestic production was not a viable option.

39. The then Minister for Trade, Investment and Innovation, Ivan McKee, was well placed to support these efforts, given his background in manufacturing and knowledge of supply chains. As noted above, Mr McKee established the Working Group, which operated between 18 March 2020 and 29 October 2020. Initially there was a particular focus on sourcing ventilators, but the Working Group was soon discussing sourcing PPE, as well as sourcing testing equipment and supplies, oxygen generating equipment and arranging air freight logistics. The Working Group used charts to track the future supply and demand of each commodity, which allowed the group to identify where there were potential shortfalls, and then source additional supplies, thereby assisting NSS.
40. The Scottish Government's Directorate for Economic Development, Scottish Enterprise, Scottish Development International and the National Manufacturing Institute Scotland all sought to facilitate effective engagement between Scotland's manufacturing supply chain and NSS. The strategy for supporting NSS comprised two parts: (i) a 'buy' strategy focussed on securing supplies rapidly on the global market, and (ii) a 'make' strategy focussed on building supply capacity within Scotland's manufacturing base.
41. To support the 'buy' strategy, Scottish Development International used its local knowledge, connections and expertise to: distribute lists of the products, standards and quantities required by NSS; support verification of new suppliers by checking certificates of authenticity and export licences; and make factory visits to provide further assurance. Scottish Development International also facilitated logistics solutions (e.g. by brokering engagement with freight forwarders) and, where necessary, held dialogue with overseas and UK Government officials to smooth the passage of goods through customs borders.
42. In contrast, the 'make' strategy was domestically focused. It was designed (a) to help producers understand the requirements of NSS (i.e. the volumes, timescales and product specifications of their requirements) and (b) to use the Directorate for Economic Development and Scottish Enterprise's networks to locate producers in Scotland, who had the technical capability and flexibility to expand and/or diversify their production, in order to manufacture quickly the products required. Staff in the Directorate for Economic Development, Scottish Enterprise and National Manufacturing Institute Scotland worked together to identify potential sources of materials and equipment required for the pandemic response. A major focus was on working with Scottish manufacturers to redirect or expand production of key products such as hand sanitiser, plastic aprons, gowns and medical grade face masks, all to support national requirements.
43. The 'make' strategy helped to establish several new domestic supply chains and supported greater self-sufficiency for Scotland. These included: a hand sanitiser supply chain created at Grangemouth, using spirit from Scottish distillers and Scottish bottling capacity; a non-sterile gowns supply chain, utilising fabric that was produced in Forfar, for garment manufacture in Glenrothes and Livingston; plastic production facilities in Greenock and Dumfries that were repurposed to produce disposable aprons; visors produced in Annan; and a new supply chain for FFP3 masks that was established in the south of Scotland, using input materials that were produced in Angus.
44. By April 2021, around 88% of Scotland's PPE by value (excluding gloves) was being manufactured domestically. This was a considerable success. However, post-pandemic demand has not been sufficient to sustain all these local suppliers.
45. The Scottish Government was not directly involved with 'Operation Moonshot', although the First Minister was briefed on it in August 2020 and kept updated on its progress. The 'Ventilator Challenge' was a UK Government initiative in which the Scottish Government had no direct role in policy or operation. However, the Minister for Trade, Investment and

Innovation sought information about this scheme from counterpart UK Government ministers, and members of his Working Group liaised with UK civil servants and several participating companies based in Scotland to help source materials. One device that came out of the Ventilator Challenge, the Penlon ES02, was trialled by two NHS Scotland Health Boards in May 2020, but based on the clinical and technical advice from the NHS Boards, it was decided by the ICU Resilience Group that these did not meet NHS Scotland requirements.

Distribution and Logistics

46. As noted above, in April 2020, the Scottish Government created a PPE Directorate, which assisted the Scottish Government in the co-ordination of a range of PPE delivery aspects. This included: supporting procurement arrangements for PPE outwith NSS, supporting formalisation of supply arrangements for PPE to primary care independent contractors and social care providers, co-ordinating offers of PPE supply from private bodies, and advising Scottish Government officials as to the implications on policy decisions relating to PPE.
47. NSS was responsible for the procurement, storage, distribution and daily management of PPE stock and ICU equipment, such as rotation and disposal. Their pre-existing responsibility had been focused on Health Boards. Pre-pandemic, primary care independent contractors (GPs, Dentists, Community pharmacists and Community Optometrists) sourced their own PPE. This provision was temporarily taken over by NSS in the early stages of the pandemic. With changes to the guidance that resulted in greater demand for PPE, along with a reduced global supply, the Scottish Government's Health Emergency Preparedness Resilience and Response Division co-ordinated the distribution of small and initial amounts of PPE to all GP surgeries in Scotland from the national PIPP stockpile.
48. NSS initially distributed PPE to Health Boards and independent primary care contractors via a 'push' model, whereby NSS determined the amount that should be provided, after consultation with the relevant Scottish Government policy officials. This model allowed PPE items that were under the greatest pressure to be deployed efficiently and reduced the administrative burden on the recipient services. The 'push' model continued until February 2021. A 'pull' model was later adopted which allowed services to request the items they needed via an online portal, all managed by NSS. This was done to minimise the risk of over stocking or short supply at a contractor level.
49. Prior to the pandemic, care homes procured their own PPE. Neither the Scottish Government, nor NSS, assumed direct responsibility for the procurement of PPE for the care sector. However, early into the pandemic, the Scottish Government worked with NSS to devise a delivery model for supplying PPE to social care providers where normal supply routes had failed. On 30 March 2020 local PPE Hubs were established to provide PPE supplies to priority care providers on an anticipatory basis. In addition, on 17 April 2020 the Scottish Government announced that NSS would provide a 'one-off' top up of supplies to all care homes. The local PPE Hubs expanded their provision to support the whole social care sector with all its PPE needs where normal supply routes had failed, and also extended their support to unpaid carers and social care personal assistants with PPE needs.
50. The PPE Hubs were supplied by NSS, with governance arrangements set out in a Memorandum of Understanding which was co-signed by Scottish Government, COSLA, NSS, Health and Social Care Partnerships, the Coalition of Care Providers Scotland, Scottish Care and National Carer Organisations.

51. From 1 April 2020, frontline staff could raise any issues with the quantity or quality of PPE available to them, via the dedicated 'PPE mailbox' that was set up by the Scottish Government. The function of the mailbox was to give health and social care staff a point of contact if they did not have access to the PPE they needed, or if they had other concerns regarding PPE supply. At the same time, the Scottish Government required each NHS Health Board to have a nominated "Single Point of Contact" for PPE. These individuals were responsible for managing PPE supply in their Health Board and were in place to resolve issues or concerns, and to be notified if the normal process and distribution was not working well. The decline in queries to the PPE mailbox suggests the 'push' model of distribution was successful in the early stages of the pandemic.
52. Between April 2020 and August 2020, the Cabinet Secretary for Health and Sport received daily reports on the status of PPE stocks by location and item, and weekly reports with information on the number of emails received, the number responded to, the number of outstanding responses and the median number of days a response had taken.
53. As noted above, NSS were primarily responsible for the logistics and distribution of PPE in Scotland. However, the Scottish Government did assist with air freight, for example in respect of PPE from China flown direct to Prestwick Airport. This contract was arranged by the Scottish Procurement and Property Directorate with Keuhne+Nagel, and NSS then collected the stocks from the freight carrier.
54. Deployment of the Army was considered, but ultimately not used, for delivering PPE in Scotland. The capacity of NSS to deliver and distribute throughout Scotland did not in itself become acute. Scotland of course is geographically distinct from other parts of the UK, and with a higher proportion of remote settlements, but NSS never reached a point where they became entirely over-stretched. NSS' national distribution centre operated from one, centrally located base at Larkhall.
55. The Scottish Government received various offers from public and private entities to assist with the distribution of PPE. While these offers were appreciated, they were not ultimately taken up.
56. Logistics was an ongoing challenge and there were initially some issues with the availability and distribution of PPE. For example, the PPE Team were aware of logistical issues associated with supplying island communities. One incident of delayed PPE delivery to an island location was brought to the PPE Team's attention, but this was swiftly resolved by NSS.

Purchasing, Excess Stock, Waste & Disposal

57. It goes without saying that there was a vast increase in demand for healthcare related equipment and supplies during the pandemic. For example, from February 2020 to the end of the year there was a 350% increase in demand for PPE overall, compared to 2019. In August 2021, NHS Scotland used three million FRSMs *per day*, equivalent to the annual demand of 2019. Given this increase in demand, the uncertain trajectory of the pandemic, and the need to consider potential reasonable worst case scenarios, there was always a likelihood that there would be excess stock. In light of these uncertainties, it would be unreasonable to suggest that procurement that led to excess stock was "unnecessary" procurement. Certainly, any government would rather be left with a small excess than the reverse. Moreover, it reflects the effectiveness of other strategies to minimise the impact of the virus, meaning we did not reach the reasonable 'worst case' scenarios.
58. During the pandemic, a total of 209 contracts were awarded by NSS for the supply of PPE, medical equipment (including ventilators) and items relating to PCR and testing, at a total

combined contract value of £588,950,344. Of the 209 contracts, 54 were secured through existing frameworks or with modifications to an existing framework. The remaining 155 contracts were secured through Direct Awards. As noted above, the Scottish Government incurred costs of around £252.36m (after accounting adjustments) on PPE in 2020/21 and 2021/22.

59. Between 2019/2020 and 2023/24, the total value of stock written off in Scotland, as reported by NSS, amounts to £2.55m on testing kits, £13.93m on PPE, £1.56m on medical equipment and consumables, £0.22m on anti-virals, plus £0.72m in storage costs. This comes to just under £19m. This means the write off is around 3% of the total value. It is submitted that, given the difficult circumstances and uncertainty faced, this, while not desirable, is not unreasonable.
60. There were sometimes specific reasons that particular items of stock were not used at the expected rate when procured. For example, when NSS procured FRSM masks, Health Boards were asked for their preference on the split between tie-back and ear loop masks. Their response indicated that a split of '20% tie backs to 80% ear loops' was preferred. NSS procured masks on this basis. In the event, the use of tie-back masks did not prove popular and their use was considerably under the requested 20%.
61. Where PPE stock was assessed by NSS and NHS Scotland to be unlikely to be used in health and social care settings, efforts were made to direct it to other parts of the public sector, to donate it internationally, or to recycle it where possible. A short life working group ("SLWG") was set up to this end. The SLWG provided advice on strategies to reduce the overall stock of PPE identified by NSS as no longer required, as well as conducting work to make sure that these strategies were carried out effectively. The SLWG worked to the principles that provision of surplus PPE stock should be on a 'need' basis rather than being driven by the availability of surplus stock, and that surplus stock for which demand could not be identified, or which could no longer be used due to expiry date/quality concerns, should be disposed of in a manner which minimised environmental damage and economic loss.
62. The group oversaw several significant donations of PPE stock to public sector and charitable organisations in Scotland. In August 2021, the Cabinet Secretary for Health, Mr Yousaf, approved the shipment of around 26 million units of PPE under the NHS Scotland Global Citizenship Programme to Scotland's international development partner countries in Malawi, Zambia and Rwanda.
63. Regarding reusable PPE, early in the pandemic, NSS purchased a large order of reusable gowns. This was largely as a way of insuring against failure of PPE supplies. A small review of the gowns was carried out, and it was found that after an initial surge in uptake, usage reduced to almost zero due to practicalities relating to laundering the gowns, and users in some areas reporting that the gowns were heavy and hot to wear. In March 2021, a Small Business Research Initiative ("SBRI") competition was launched for cleaning and reuse of PPE and environmental decontamination. The competition was coordinated by NHS Tayside and funded by the Scottish Government, with additional contribution from Transport Scotland. Stage 1 of this initiative helped develop products but did not take them as far as becoming medically and commercially approved. The initiative highlighted some of the key issues that both companies and NHS Boards in Scotland face when wishing to introduce and procure reusable PPE. One of the main issues was the decontamination of the PPE and the need for nationally adopted standards.

Regulation & Inspection

64. The regulation of medical devices is reserved to the UK Government. Similarly, the COSHH regulations relating to the use of PPE are reserved and fall within the remit of the Health and Safety Executive (“HSE”). The Directorates for Health and Social Care are not aware of the Scottish Government liaising directly with the regulatory bodies who were responsible for setting the standards for PPE in Scotland during the pandemic. Jeane Freeman’s statement confirms that she did not make any changes to regulatory regimes relating to procurement of key health care equipment and supplies during the pandemic.
65. At a European level, however, in March 2020 there was a European Commission ‘Recommendation’ 2020/403, which contained a number of temporary arrangements (referred to as ‘easements’) to facilitate PPE supply during the pandemic. Put short, this allowed PPE that did not have a “CE mark” to be placed into the European market. However, this ‘non-CE’ PPE (or ‘eased PPE’) still required to adhere to the relevant safety requirements and meet the approval of the HSE. As a consequence of Brexit, as of 1 January 2021 Recommendation 2020/403 did not carry over into domestic law. England and Wales had moved to replicate these easements by regulations.
66. The Scottish Government accepted that regulatory alignment was, of itself, desirable. However, NSS had not used the easement arrangements to procure ‘eased PPE’ for Health and Social Care use and, in late 2020, had around four months’ worth of CE marked PPE in stock. All the PPE purchased through the Scottish Government’s Lyreco framework for non-health and social care provision was also CE marked. It was, however, difficult to estimate the potential prevalence of non-CE marked PPE in the private sector. There was also uncertainty about the trajectory of the pandemic. It was considered that easements might allow new products to be tested and enter the market more easily, without a risk to quality of safety, given that the same HSE standards had to be met.
67. On balance, the Scottish Government considered that regulations should be made and these came into force on 1 February 2021. It was not necessary to extend the easement regulations after the 31 June 2021 expiry date. NSS did not need to make use of the easement arrangements and in June 2021 had at least a four month stockpile of all types of PPE for the use of all NHS Scotland services, all of which was CE marked.

Equalities

68. Initially, there were issues around the fit of PPE during the pandemic. This topic was canvassed extensively in Module 3. Those included face-fitting of specific types of masks, specifically FFP3, which impacted on staff with smaller and differing face shapes and had a particular impact on women, people from ethnic minorities and those who had facial hair (including for religious reasons). As Prof Sir Gregor Smith noted in his Module 3 evidence, in June 2020 the Scottish Government established an ‘*Expert Reference Group on COVID-19 and ethnicity*’, to understand better not only the impact on Black, Asian and ethnic minority people, but also some of the broader impacts that related to ethnicity across society.
69. The Scottish Government also worked with NSS to support rolling out face fit testing to Health Boards. Funding was provided to NSS to enable them to procure 20 ‘TSI Portacount’ devices, a quantitative fit testing device that produces direct face fitting numerical results. The Scottish Government maintained regular contact with Health Boards and received updates from NSS in respect of their work with Arco Ltd, who were contracted to provide face fit testing services. In October 2020, there were eight dedicated face fit testers, and by March 2021 this had increased to 35.

70. The Chief Nursing Officer worked with the PPE Directorate to ensure there were a variety of PPE options available to staff, and shared intelligence from Health Boards on face-fit issues at weekly PPE meetings. The Scottish Government's PPE team would take this information and use it to operationalise improvements, such as commissioning Alpha Solway to produce smaller face masks and enabling health boards to access Jupiter hoods and parts. This was to ensure that the specification of masks better recognised the demographic of health care staff and resulted in a greater range of appropriate fitting PPE to be issued.
71. Collaborative working between Alpha Solway, the Scottish Government, NSS and Scottish Enterprise led to the production of FRSM masks, visors and FFP3 masks. As noted above, the 'PPE Action Plan' recognised the challenges faced in particular by woman and ethnic minority healthcare workers and detailed the ongoing work to resolve this issue. A small scale study carried out in late 2020, in which 90% of participants were female, showed that the overall 'fit pass rate' was 81.5%. Where there was a range of sizing options available for PPE items, NSS bought and made available a wide range of sizes. NSS were providing at least eight different models of FFP3 masks by March 2021 and four sizes of nitrile gloves.

Learning for the future

72. The Scottish Government has undertaken a vast array of work to identify the successes, the challenges, and the lessons to be learned from the pandemic. Several reviews and exercises have been carried out in relation to PPE, some commissioned by the Scottish Government and others in which the Scottish Government has been involved. These are listed in the witness statement of the DG HSC³.
73. A series of independent official audit reports (the Audit Scotland brief published in June 2021 and the KPMG report published in August 2021) highlighted specific points for action.
74. This work informed the PPE Futures Programme and then the PPE Supply Implementation Project. The Scottish Government sought to learn lessons from the pandemic and incorporate them into future policy. The work and findings of these bodies is being implemented by NSS and Scottish Government policy teams with a view to securing a resilient and robust supply of PPE for the future.
75. The main themes identified were further tested in a public consultation on future pandemic PPE supply. The Scottish Government consulted on the key lessons identified, whether any others should be considered and for respondents' views on the proposed supply arrangements.
76. A lessons learned evaluation for the Lyreco framework was completed by the PPE unit in December 2021. This detailed the strengths of the framework such as allowing essential public services to purchase PPE of an assured quality at market price while not replacing any existing "business as usual" routes. The good governance in place throughout the framework was also highlighted with a strong understanding of risk throughout its lifetime and the continuous consideration of improvements.
77. A short term working group was commissioned by the Director of ICU Resilience to explore and develop a strategy for the short and medium-to-long term management of medical

³ INQ000498141 at §472.

equipment procured as part of the pandemic expansion. The group reported in June 2020 and in March 2021⁴.

78. The auditing of Health Board ICU ventilators was one of the challenges experienced in relation to ICU equipment. The auditing had to be undertaken manually, in the absence of a national medical equipment management system, including cleansing and harmonising the data to account for differences between boards, as well as errors. As a key part of the learning from Covid-19, a National Medical Equipment Management System project is currently being implemented. Once established, this will provide a “Once for Scotland” joined up data view for the operational and strategies management of the medical equipment inventory across Scotland.

Conclusion

79. As we hope we have shown in this Opening Statement, the existence and strengthening of good working relationships, together with the forging of new ones, played a pivotal part in the Scottish Government’s approach to procurement during the pandemic. Further, impressive and significant results were achieved in the manufacturing of PPE, largely as a result of innovative approaches. Finally, overarching, tried and tested public procurement processes ensured a well regimented system, that was able to cope with the challenges of the pandemic.
80. In closing, the Scottish Government would wish to pay tribute to all its partners, with whom it worked and collaborated, in providing the essential supplies and equipment to keep the people of Scotland safe.

14th February 2025

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⁴ INQ000496442, Report titled ‘*Scottish government COVID-19 ICU expansion legacy strategic planning short life working*’, dated 01/06/2020. The document contains both the June 2020 and March 2021 reports.