**IN THE 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**

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**Covid-19 Bereaved Families for Justice UK & NI Covid-19 Bereaved Families for Justice**

**OPENING STATEMENT FOR MODULE 5**

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## I. INTRODUCTION

1. This Inquiry is about establishing facts, ensuring accountability and changing the future. Preparedness, response, recommendations. As in previous modules, Module 5 will illustrate the absence of any meaningful civil emergency or pandemic preparedness – capacity, resourcing, planning – this time relating to procurement and vital supplies. Perhaps more than in any other module, the Inquiry will need to also look at systems and processes at the heart of government which have caused widespread public concern.

2. There are serious concerns about the nature of decisions taken by government during the pandemic in relation to the procurement of medical equipment, and Personal Protective Equipment ('PPE'). There are equally serious concerns as to whether unscrupulous people knowingly profited from the lack of proper emergency systems, including that they were facilitated to do so by political patronage. Whereas the Inquiry has looked at lack of preparedness and an incompetent response in other modules, the added element in Module 5 is the ulterior motive of personal financial gain from the emergency.

3. The Inquiry has already heard evidence of the extreme difficulties faced by medical staff in accessing appropriate PPE[1] and basic medical equipment[2]. As reported in the media, some staff resorted to the wearing of bin bags where they were unable to access suitable supplies of protective wear.[3] The lack of access to appropriate PPE quite clearly contributed to the transmission of Covid, and in turn, to deaths, in a range of health and care settings. Many of our families recount that their loved ones were left with no or inadequate PPE as frontline key workers in health and social care or transport systems, or were cared for by staff who had insufficient protective wear. Others remember shortages of other equipment such as body bags, which were tragically in high demand during the pandemic as lives were lost.

4. In a context where preparation for and response to the pandemic was hindered by years of underfunding across the NHS, social care and other frontline public services, the proper use of public funds is of particular importance to the families that we represent. Public procurement from the private sector accounts for about a third of public sector spending in the UK, and it is estimated

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[1] M3 Transcript of Hearing Day 13, p.38, 40; M3 Day 14, p. 117
[2] M3 Transcript of Hearing Day 13 p.3
[3] BBC News, 'Coronavirus: The NHS workers wearing bin bags as protection", 5th April 2020

to exceed £300bn a year on average.[4] Health procurement is the largest area of that spending. Therefore, the loss or misappropriation of public funds has obvious knock-on impacts on the quality, availability and resilience of the public services that were crucial to the response to the pandemic and will be critical in future pandemics.[5]

5. In simple terms, every pound overpaid for PPE, or wasted on contracts for defective PPE was a pound that could have been spent on the health and social care system. That is why the way in which these contracts were awarded and the apparent role of cronyism, corruption and profiteering is a matter of such acute public concern and should be carefully scrutinised.

6. Below, we set out the disclosed evidence regarding two example suppliers. It provides a stark canvas for the work of the Inquiry and poses important questions. The Inquiry will call evidence about those contracts and a number of others. It is essential that it does so. From the outset, we have urged the Inquiry to call the suppliers themselves, to obtain a complete picture and answers from those who sought to profit - and did so - from the emergency, as well as the government officials and the referrers. The families regret that the Inquiry will not do so. Nevertheless, the evidence, coming primarily from contemporaneous documents, is compelling.

## II. IMPACT

7. We have noted in previous modules the significance of the involvement of those we represent in each aspect of the Inquiry. Evidence heard in previous modules, of the personal experiences of the bereaved and their loved ones, has been of very significant value in drawing conclusions about what went wrong, and how it went wrong. That is because they have been able to identify and describe the detrimental impact of decisions, from their own individual and collective experiences.

8. In this Module the issue is in one sense more complex. The Inquiry's own expert has identified the difficulties posed by a "*many hands problem*" in cases where products ordered had not reached the frontline: it is "*difficult to establish whether the problem (and responsibility) lied with the logistics operator, the manufacturer, the CTSP, NHS Supply Chain, or any combination…This would also have made fixing the problem rather difficult*" both due to "*the multiplicity of points of failure*" but also "*because none of those organisations would have wanted to bear the cost.*"[6] Where supplies from central government to devolved nations are in issue, there will of course be additional "*hands*", complicating the issue further.

9. Those we represent and their loved ones were the end users of the products which were subject to the processes of procurement and distribution under consideration. Our clients are frequently able to identify that something had gone wrong, due to their own experience of witnessing the lack of adequate PPE, or life-saving equipment, or the limited supply of tests. However, for the reasons outlined, they cannot from personal experience identify where the precise point of failure was. This is no doubt one reason that no Rule 9 request was made to CBFFJ or NICBFFJ, and no witness from either group has been asked to give evidence in this Module. However it is important

[4] INQ000539153/11; "Procurement statistics: a short guide"
[5] INQ000539153/13
[6] Ibid/57 §181

to emphasise that this context does not mean they have any lesser interest in this Module and its outcome. Arguably the reverse is true. That is for two broad reasons.

*(i)* *Profiting from the pandemic*

10. The first is the very nature of the potential wrongdoing under consideration in the Module, which is considered to be of overwhelming importance to those we represent.

11. Prof Sanchez-Graells identifies that the "*core aims*" of public procurement regulation in the UK" are "*preventing corruption and maladministration*". [7] Maladministration may include procurement of goods of such low quality that they go unused, whilst corruption is "*the abuse of entrusted power for private gain*".[8] Prof Sanchez-Graells identifies that it is not only a normally a criminal offence, "*but it always damages taxpayers through loss or misappropriation of public funds.*"[9] That is no doubt an excellent academic summary. What our clients would want to highlight is that in this case, the cost of corruption during the pandemic was not limited to loss of public funds. There was an inevitable cost to people's lives, including the loved ones of those we represent. Moreover, there was a profound loss of public confidence in the administration of government, as a result of the perception or belief that individuals who had contacts in government, were enabled to financially profit at taxpayers' expense.

12. Therefore, whilst in previous modules this Inquiry has considered decision-making which CBFFJ and NICBFFJ consider was wrong, inexplicable, even cruel, and led to loss of health and life, this would appear to be the first occasion where the Inquiry is considering a system which apparently permitted instances of wrongdoing and where individuals appear to have achieved personal financial gain at the potential expense of individuals' health and lives. Of very significant concern to those we represent in this Module is that some individuals looked at the pandemic and saw not tragedy, but an opportunity for financial gain, which they were determined to avail of despite the inevitable cost to people's lives. That the system of procurement in Government has permitted, facilitated and even apparently encouraged such behaviour is particularly galling. It is apparent from reports in the media and from evidence gathered in this Module, that the system all too frequently resulted in supplies provided at high prices and for significant financial gain to the supplier, in circumstances where those supplies were subsequently found to be inappropriate or otherwise unusable.

13. We consider it essential to emphasise this context, that the Inquiry should not underestimate the strength of feeling among those we represent about a system which apparently permitted individuals to opportunistically or fraudulently profit at the expense of the lives of their loved ones. Whilst the "many hands" problem may prevent a conclusion that this behaviour was specifically a factor in the death of a loved one, CBFFJ and NICBFFJ members can point to the fact that their loved ones were suffering and dying as a result of shortages of PPE and life-saving equipment while such profiteering was taking place.

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[7] INQ000539153/15
[8] Ibid/14
[9] Ibid/14-15/31-35

14. Janice Glassey, the mother of CBFFJ UK member Kerri Glassey, was an NHS worker. There was a serious lack of PPE and even hand sanitiser at her place of work. She worked with the out of hours district nursing team administering end of life care to patients sent home from hospital or released back to care homes to die. She had just one more shift left to work before she retired when she became infected with Covid-19 and died.

15. Basil Elliott, the brother of NICBFFJ member Anne Elliott, passed away after contracting Covid in his care home in Enniskillen. Anne had been vocal, both to the home and to entities such as the Regulatory and Quality Improvement Authority, in raising concerns that there were inadequate measures to guard against Covid 19 in the home, including inadequate use of PPE. Anne believes that this cost her brother his life.

16. Femi, the father of CBFFJ UK member Lobby Akinnola, died from Covid-19. He had been in previous good health. Femi worked in social care and was a support worker for a learning disability charity. He reported a distinct lack of available PPE.

17. Bridget Halligan was the mother of our NICBFFJ member Agnes McCusker. Bridget passed away after contracting Covid early in the pandemic in a care home in Keady. Agnes describes attending the home on a number of occasions to bring items or medication for her mother. She would dress in PPE on such visits, in order to protect residents and staff, only to be met by staff members who were not wearing any PPE.

18. Dr Glen Grundle's mum died in a hospital due to Covid-19 on 12 April 2020. She was treated by staff who were not wearing PPE. She also had a DNACPR that she had not agreed to and her ceiling of care was on the ward and set at "continuous positive airway pressure", rather than admission to ICU or ventilation. Glen has serious concerns in relation to the basis on which this decision was made given the extreme pressure on medical equipment at this time and specific fears that the country was going to run out of ventilators.

19. CBFFJ UK member Laura Cairns' mother Sue was a care worker for autistic adults at a care home. The company she worked for did not give staff adequate PPE during the first lockdown and told staff they would be breaking contracts if they did not work as normal even without appropriate protection. Sue died after becoming infected with Covid-19.

20. Prof Naomi Fulop lost her mother, Christina, to Covid-19: she had been receiving domiciliary care. Naomi believes that her mother contracted Covid-19 from a visiting carer because they had been provided with insufficient PPE, including masks. It is of particular concern that the carers were only given one surgical face mask, as per Public Heath England guidance, to wear per eight-hour shift and so went from one frail, vulnerable person to the next wearing the same mask.

21. Michael James Mallon was a farmer all of his life. He had four children and, with a very big personality, he was well known and respected in his local community. He was admitted to Craigavon hospital for a non-Covid related reason in February 2021. He had requested a clean FRSM mask but was told that masks could only be changed every three days. He contracted Covid-19 whilst in the hospital, and passed away having been isolated from his family.

22. CBFFJ UK member Sioux Vosper lost her father, John, to Covid-19 on 16 April 2020. The carers who visited her father did not have adequate PPE. When John went into hospital, Sioux was not allowed to visit him, despite guidance at the time allowing for this because he was receiving palliative care, because the hospital was experiencing a PPE shortage. She was eventually able to see him for a brief 20 minute visit. John died shortly after.

23. Geraldine Anderson's husband, Seamus Martin Anderson, passed away on 3 July 2021 in an ICU in Altnagelvin Hospital in Derry. She had requested that he be placed on an ECMO machine, which she understood would have assisted him, only to be informed that there were none available in the jurisdiction, save in Newcastle. This was suggestive of a shortage of potentially life-saving equipment, which requires to be justified.

24. CBFFJ UK member Katherine Poole lost her father, John, on 31 March 2020. He had a diagnosis of schizoaffective disorder, Barret's Oesophagus and had a pacemaker. At the time of his death, John was an inpatient at a mental health unit. After his death, Katherine was told that the mental health unit had only basic supplies of PPE which were not used routinely but rather only for dealing with Covid-positive patients.

25. The stories of CBFFJ UK & NICBFFJ clients echo the evidence before the Inquiry in this and other Modules. As Professor Philip Banfield of the British Medical Association has told the Inquiry: "*The supply of PPE to staff across the health and care sectors during the pandemic was woefully inadequate.*"[10] As a result, staff were forced to go without PPE, reused single-use items, used items that were out of date with multiple expiry stickers visibly layered on top of each other, or used homemade/donated items.[11]

26. Entirely consistent with the concerns raised by NICBFFJ and CBFFJ families, in her statement for Module 5, Caroline Lucas, former MP for Brighton Pavilion describes receiving reports from March 2020 onwards of difficulties in accessing PPE in local hospitals, care homes and for care workers in the community who were caring for vulnerable adults. [12] This included communications "*from a carer working on the front line pleading for me to get carers tested and the necessary PPE*",[13] and "*distressed emails from the relatives of people in care homes who could not visit*".[14] When she raised this, she was told that care homes did not have enough PPE for staff, let alone visitors.[15]

27. Importantly, the evidence shows that issues relating to the supply and adequacy of PPE impacted some groups more than others:

    a. Ethnic minority doctors more commonly experienced PPE shortages, had higher rates of failing a fit test, felt pressure to work in environments without sufficient PPE and felt fearful about speaking out about safety issues.[16] According to a study by the Runnymede

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[10] INQ000562457/16
[11] Ibid
[12] INQ000528583/3-5; INQ000522190; INQ000522198
[13] INQ000528583/10; INQ000522197
[14] INQ000528583/10
[15] Ibid
[16] INQ000562457/16

Trust, 32% of black and minority ethnic groups were not given appropriate PPE at work during the pandemic, compared with 20% of their white counterparts.[17]

b. Women doctors and healthcare workers struggled to find well-fitting masks due to the gender bias in PPE design and, according to the BMA, reported higher rates of failing a fit test.[18] There is evidence that black and minority ethnic women were disproportionately exposed to the lack of PPE at work, for example, Filipino female nurses had a high fail test rate on several of the standard FFP3 masks,[19] despite the fact that this is the third most common nationality of NHS staff.[20]

c. Individuals who are deaf and hard of hearing who relied on lipreading faced additional challenges as the development of clear masks was "*painfully slow*".[21]

28. The Inquiry must carefully consider the extent to which procurement decisions failed to take account of and contributed to structural discrimination.

*(ii) Downplay, diminish & deny*

29. A second broad reason that this Module is particularly important to those we represent, is the extent to which those previously in authority have appeared to downplay, diminish or deny the significance of the failures in the procurement system. This contrasts to some extent with attitudes to issues in previous modules where there have been obvious failures and where the response of those in authority has often been to accept in retrospect that there were errors, but to deny that they were apparent at the time. This has been witnessed, for example, in relation to the failure to ramp up capacity for test, trace and isolate at an early stage, or the failure to identify the risk from asymptomatic transmission, or to act on the basis that the virus was airborne at an early stage. By contrast, the response in this Module from those in authority appears to be to continue to downplay systemic failings, suggesting either a failure to grasp that anything had in fact gone wrong or a cultural failure to recognise the harms of cronyism or worse.

30. For example, in response to queries about the systemic failure to comply with transparency requirements, Gareth Rhys Williams, Government Chief Commercial Officer ('GCCO') explained: "*at the time considerable effort was going into other COVID-19 related procurement. ...*"[22]

31. Former SoS for Health Matt Hancock puts it more combatively in one of only two paragraphs devoted to "*Fraud, Compliance and Contractual Performance*" in his own statement:

> "*On occasions the Government missed publication deadlines because officials were too busy buying life-saving equipment. While I did not know about this at the time, I would have completely supported their decision on time-allocation and thank them for their service. We*

[17] INQ000518353/2
[18] INQ000562457/17; INQ000553817
[19] INQ000504938/36
[20] "NHS staff from overseas: statistics"
[21] INQ000562457/17
[22] INQ000497031/46 §3.33

*knew at the time that defeating the virus was our number one priority, and the focus of our efforts was, quite rightly, saving lives during an emergency.*"[23]

32. The public procurement expert instructed by the inquiry has identified that explanations of this nature were "*unconvincing*" and demonstrated "*that accountability-related requirements was clearly de-prioritised*". [24] Significantly, they also disclose a failure to understand why accountability mechanisms were essential for protecting the system and therefore for protecting lives. The purpose of accountability, and relatedly transparency, is to prevent and identify maladministration and corruption, and in the context of a health pandemic, to ensure that lives are not lost through the provision of, for example, inadequate PPE, or faulty tests, or to prevent unjustified loss of funds to the public purse to fraudulent profiteering, where those funds are urgently needed to purchase otherwise effective equipment which could be used to protect health and life. The failure to appreciate this context, even at this remove, is particularly concerning, suggesting that the significance of transparency and accountability is still not appreciated by those who were in authority at the time.

33. CBFFJ UK & NICBFFJ therefore consider it essential that the Inquiry identify where those failings occurred, and provide recommendations which both emphasise the importance of such systems and ensure that such failings are not repeated in future, including the critical role of candour and transparency.

## III. PLANNING & PREPAREDNESS

34. As CBFFJ UK and NICBFFJ have submitted in previous modules, it is necessary to reflect on the position the UK found itself in at the brink of Covid-19 in order to ensure that we can be better prepared for the future, noting the overwhelming likelihood of another pandemic in the near to medium term. Preparedness is therefore a fundamental aspect of Module 5. With no emergency procurement plans and virtually no stockpiling, vital time was lost.

35. It is well documented that PPE stockpiles were wholly insufficient to respond to the Covid pandemic.[25] In the future, in the pre-pandemic phase, we must ensure the construction and maintenance of sufficient stockpiles of PPE to meet a range of potential pandemic threats. Those stockpiles must be capable of being scaled up as an emergency occurs, and with rapid and effective distribution.[26] To that end, this Inquiry should look to what structures, systems and processes were in place to ensure that procurement was sufficiently "*agile or flexible*" as of 1 January 2020.[27]

36. No doubt the starting point for the Inquiry's investigation of these issues will be the Module 1 Report findings that "*the processes, planning and policy of the civil contingency structures within the UK government and devolved administrations and civil services failed their citizens.*"[28] The Report recounted that the importance of PPE was an issue that arose repeatedly in pandemic preparedness exercises, including the 2016 exercises Silver Swan (pandemic influenza in

[23] INQ000536350/48 §221
[24] INQ000593153/116 §302.2
[25] BBC, "Covid-19: 'Clear evidence' of PPE shortages across NI during pandemic", 1st March 2022
[26] INQ000184637/7
[27] INQ000184901/70-71
[28] M1 Interim Report p.3

Scotland),[29] Iris (a MERS-CoV outbreak in Scotland)[30] and Exercise Alice (MERS in England), which made plain that at the earliest stages of such an outbreak, suitably trained professionals, with access to PPE in sufficient quantities, sufficient bed capacity and specialised clinical equipment, were key.[31]

37. Despite the identified need for adequate PPE stockpiles as well as plans for distribution and fit-testing, there is wide agreement amongst Module 5 witnesses that a lack of planning and preparation for these issues impacted on every aspect of the response, including our ability to secure critical healthcare equipment and supplies. Central to this was the fact that the UK failed to prepare for the known risk of a pandemic like Covid-19.[32] As Gareth Rhys Williams, GCCO, states:

> *"...the fact that the pandemic PPE stock did not contain the right types of product for dealing with Covid (e.g. gowns) meant that the specifying and procurement teams were always going to be playing catch up..."*[33]

> *"Apart from the pandemic stockpile maintained by DHSC, at the start of the pandemic, there was no central record of what existing stocks of PPE were held by each Trust. The pandemic stockpile was in "deep storage" in a warehouse in the north-west, rather than in a distribution warehouse. The pallets were stacked so that they were not immediately accessible, and pallets needed to be moved to a distribution centre so that loads could be broken up to send to individual hospitals and other customers. It is my understanding that some of the pandemic stock was found to be out-of-date and therefore unsuitable or requiring re-certification before it could be used. The Cabinet Office team managing the PPE Buy Cell was not aware of these issues until after July 2020, when the period of Cabinet Office direct engagement in PPE buying had ended.*[34]

38. A distinct and important issue in relation to the stockpile is the fact that, prior to the Covid-19 pandemic, available PPE in the UK was modelled on Caucasian males, so that women, smaller individuals and people of non-Caucasian ethnic backgrounds, or those with certain disabilities and illnesses, were not likely to gain a good fit from standard RPE. The Inquiry must address the structural racism which led to deficiencies in the PPE that was stockpiled, including the fact that PPE that would fit minority ethnic staff was purchased in smaller quantities,[35] despite the obvious knowledge that the NHS workforce is diverse and in disregard of duties imposed by the Equality Act 2010.

39. The 2011 Pandemic Influenza Preparedness Programme ('PIPP') did not consider crucial aspects of preparedness in relation to the emergency *procurement* of PPE and other supplies due to the implicit assumption that the existence of stockpiles would mitigate against early shortfalls and absorb initial extremely urgent demand whilst additional supplies were secured through normal

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[29] INQ000147883/17
[30] INQ000147839/8-9
[31] INQ000090431/9
[32] M1 Interim Report p.2
[33] INQ000536362/36-37
[34] INQ000497031 /140 §4.285
[35] M3 Transcript of Hearing Day 30, p121

procurement processes.[36] As a result, the UK not only entered the pandemic without adequate stockpiling, but also without "oven-ready" emergency procurement and distribution plans. The Inquiry must consider whether this was a fatal strategic flaw. Johanna Churchill, former MP and Parliamentary Under Secretary of State for Public Health and Primary Care, accepts:

> *"It was clear to me once the pandemic had begun, there was minimal preparedness ... There were years of lack of preparation and the focus had been on a potential flu pandemic. The level of stock held at Haydock was not sufficiently inventoried for there to be any confidence that this represented the PPE that was needed."*[37]

40. The Inquiry should pay particular attention to the 'devolved' nature of health and social care procurement, with responsibility resting with NHS and community providers themselves, with no central procurement process in non-emergency times. Was that also a reason underpinning the lack of attention to emergency procurement?[38]

41. The Inquiry should also consider:

    a. The impact of the organisational complexity of the management of the PIPP stockpile, including the complex chain of contracts relating to the control and management of the stock and the impact this had on overall understanding of what was stored and visibility of stock levels and quality.[39]

    b. Decisions made in relation to the stockpile; in June 2019, NERVTAG advised the Department for Health and Social Care ('DHSC') of the necessity to include gowns, however this had not been achieved by the time of the pandemic.[40] Evidence suggests equipment was not checked regularly and so there were "*acute issues with dates of expiry*".[41]

    c. Apparent confusion as to who held responsibility for the stockpile; SCCL state that Movianto held stock for each of the devolved nations, whereas DHSC states that each stockpile was held separately within the owning nation, with logistics also coordinated by the owning nation.[42]

    d. The failure to consider PPE supply arrangements for non-health sectors.[43]

    e. The failure to clarify and stress-test centralised procurement mechanisms and the resilience of the outsourced supply chain in pandemic preparedness exercises such as Exercise Cygnus,[44] and the more general lack of detailed contingency planning and supply chain mapping of where PPE products were produced.[45]

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[36] INQ000539153/39
[37] Ibid/9
[38] INQ000497031 §4.279
[39] INQ000539153/60
[40] M3 Transcript of Hearing Day 30, p.15; INQ000528391/3
[41] INQ000533311/8
[42] INQ000539153/60
[43] INQ000087205/3
[44] INQ000539153/61
[45] INQ000536362/38

f. The impact of Britain's exit from the European Union and "No Deal" planning on procurement and stockpiles, particularly for NHS organisations.[46]

g. The total lack of data preparedness, in particular the lack of a centralised system for recording stocks of PPE and other medical equipment.[47]

## IV. INSTITUTIONAL & POLITICAL FAILURE

42. In the early stages of the pandemic, the lack of institutional preparedness, absence of appropriate stockpiles, disruption to global supply chains and massive demand made the procurement of key healthcare supplies and equipment extremely challenging. All of these points were foreseeable, and all should have been addressed by proper planning well before the pandemic came over the horizon. Yet, as the virus started to spread in early 2020, those in government realised too late that the country faced a critical shortage in PPE, and that there was a need to act fast to ensure access to ventilators and testing supplies. These shortages would later cost lives.

### *(i) Inertia & false reassurance*

43. In Module 2 the Inquiry heard that Professor Jonathan Van-Tam warned as early as 24 January 2020 of the risk that there would not be enough PPE to respond to an airborne High Consequence Infectious Disease, as Covid-19 was classified until 13 March 2020.[48] By the end of January 2020, a number of EU countries identified a need for PPE in case the situation worsened[49] and joint procurement efforts were initiated by the EU in February 2020. Although UK officials participated in meetings of the EU Health Security Committee, the UK unilaterally decided not to participate in these procurements.[50] Johanna Churchill, former Under Secretary of State in the DHSC states that *"[i]t became apparent within days of the pandemic beginning that there was a serious issue in respect of PPE. It became obvious that there was a shortage of items of which there was a finite supply*",[51] whilst the DHSC states that PHE and Supply Chain Coordination Limited ('SCCL') were "*initially confident that their procurement efforts together with the PIPP stockpile placed in the UK in a strong position in early February*".[52]

44. Dominic Cummings told the Inquiry in Module 2 that by 26 March 2020, Matt Hancock was still providing assurances that PPE procurement was under control and on 31 March 2020 told others that there was 10 weeks' stock left, claims which turned out to be untrue.[53] The available evidence does appear to show worrying complacency in the DHSC. By 21 March 2020 assurances were still being given that "*we have plenty of PPE*",[54] despite the fact that news stories the day before reported that nurses in UK hospitals were wearing bin bags to protect themselves,[55] and a DHSC process map dated 1 April 2020 states:

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[46] INQ000539153/9
[47] INQ000536362/37; INQ000535017/8
[48] INQ000047541/3
[49] INQ000493445
[50] INQ000528391/155
[51] INQ000533311/13
[52] INQ000528391
[53] INQ000273872/72
[54] INQ000233775
[55] "Exhausted nurses at overwhelmed London hospital wore bin bags to protect themselves from coronavirus" 20 March 2020

"*Whilst existing stockpiles and resupply routes are extensive, well designed and thought through, alternative measures may be required given the immediacy of the Covid-19 situation and the reaction of other national governments in limiting their manufacturers from exporting PPE products.*"[56]

45. CBFFJ UK & NICBFFJ urge the Inquiry to investigate whether inertia, incompetence and false reassurance fundamentally undermined the procurement drive in the initial stages, and compounded the problems when it did eventually take place, given the extremely challenging global market for PPE by that time. The Inquiry must examine the extent to which decisionmakers should have recognised and acknowledged the absence of preparedness and stockpiling, and the likely shortfalls in PPE and other equipment by the end of January 2020 and the steps that ought to have been taken in response. The Inquiry must also consider the effect that the general political dysfunction uncovered in Module 2 had on this failure to act. For example, Ms Churchill recalled "*a tussle at the outset of the pandemic between DHSC and the Cabinet Office as to who would be responsible for procurement*"[57] and states:

"*There were occasions when I felt individuals were playing politics and there were lots of big personalities in the room during COBR meetings rather than a complete focus; in my view, there was a lack of clarity as to who was in charge between [Secretaries] of State in DHSC and the Cabinet Office. There was a lack of understanding of how the NHS worked in practical terms by the majority of those in COBR…. The purpose of COBR was to bottom out details and to seek solutions but I could not say hand on heart that it always had the right people in the room.*"[58]

*(ii)* <u>*Institutional failure*</u>

46. When national emergency procurement processes were assembled, it quickly became apparent that the institutions with responsibility for healthcare procurement and distribution were not up to the task of responding to a pandemic. As Ms Churchill recalls, "*SCCL, PHE and the NHS all had substantial issues… The lack of interconnectivity between the organisations and the lack of consistent technology meant that the bodies failed.*"[59] The NHS had no stock management and ordering system which meant that there was no centralised record of PPE stocks held at the NHS frontline.[60] SCCL, the main supplier in non-emergency times, was similarly not up to the task. The care sector lacked any means for centralised data collection and analysis. According to Gareth Rhys Williams: "*The difficulty experienced in forecasting demand was probably the single largest issue.*"[61] Professor Sanchez-Graells notes: "*The importance of having accurate and updated data to inform the response to an emergency, including through procurement, can hardly be overstated.*"[62]

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[56] INQ000551580/5
[57] INQ000533311/18
[58] INQ000533311/14
[59] INQ000533311/9
[60] INQ000536362/37; INQ000535017/8
[61] INQ000535017/14
[62] INQ000539153/40

47. In simple terms, there was no central understanding of the medical equipment and supplies the country had, or what was needed. Whereas estimates of future needs will always be difficult in an emergency, an inventory of what exists, where it is, and how it is managed and distributed is not, and should have been readily available. This had profound impacts on the response, particularly in the first few months. As the Inquiry found in Module 1:

> *"The decisions that were taken early in the Covid-19 pandemic rested on having "fast and reliable data". If decision-makers and advisers lack access to such data, they are "essentially driving in the dark"."*[63]

48. The Daily Procurement Meeting of 20 March 2020 records:

> *"Emily Lawson added that the data on PPE stock is really poor. They don't know what is being held with trusts. They don't know what is coming into the country..."*[64].

49. CBFFJ UK & NICBFFJ urge the Inquiry to investigate why such basic and important data was not available, and why centralised procurement functions operating in England, Wales, Scotland and Northern Ireland ('NI') were not able to maintain accurate data.

50. A key example of institutional failure was the apparent operational collapse of SCCL, initially a government-owned company now wholly owned by NHSE, which manages the NHS Supply Chain, supplying clinical products in England and occasionally Wales and Scotland. According to the DHSC, in February 2020 SCCL was instructed to increase PPE purchasing in relation to specific areas of PPE. However, SCCL became unable to meet demand from the NHS and other health and social care bodies. In late March, Matt Hancock's diaries record:

> "*Just as I was allowing myself to feel a bit more cheerful, I received a very unwelcome call from Steve Oldfield, informing me, in essence, that the PPE supply chain has blown up. He told me that the government-owned company that gets supplies to hospitals across the NHS has effectively collapsed. The increase in demand for PPE was so enormous that they couldn't fulfil it. This is a total disaster. I'm absolutely furious that the people who are meant to be experts in logistics have been unable to cope because there are too many actual logistics. The real question of course is how to fix it. We're bringing it all in house – Steve will have to do it, and we need to find some amazing people to get it sorted.*"[65]

51. Basic issues were also experienced in the use of systems. The stock managing and ordering system within SCCL had no spare capacity for more than very few additional users without risking crashing, requiring users to remain on their own, fragmented systems.[66] According to Gareth Rhys Williams, "*The NHS Supply Chain IT infrastructure was at breaking point before the pandemic and could not handle the extra users that we needed. There were similar issues with access to the DHSC/SCCL systems.*"[67]

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[63] M1 Interim Report p.97
[64] INQ000233775
[65] INQ000569777/12
[66] INQ000536362/37
[67] INQ000535017/47

52. Even when PPE supplies were available, the lack of preparedness continued to hamper the UK's response through inadequate distribution and logistics systems. It was apparent by mid-March 2020 that DHSC's core logistics partner (Unipart) was "*incapable of meeting the distribution challenge facing it*"[68] and "*could not keep up with the required distribution of PPE or quickly establish a new system*".[69] The Inquiry ought to enquire why SCCL or DHSC did not have a logistics partner in place pre-Covid that was able to scale up their operations in response to a national pandemic.

53. The conditions of the pandemic exposed existing weaknesses in the institutions relied upon to provide critical healthcare equipment and supplies. Or to express it another way, there was no consideration of an emergency plan, and no capacity or infrastructure to cope with anything other than business as usual.

*(iii)* *Fatal flaws in the national response*

54. In examining the high-level political and institutional response, the Inquiry should further examine:

    a. How shortages in critical supplies like PPE impacted on other aspects of the national response to the pandemic. For example, the Inquiry has already heard evidence on the decision to downgrade Covid from a HCID in March 2020. That decision may of itself be defensible on the relevant criteria, but the coincident decision to downgrade RPE was not. That decision exposed countless healthcare workers, and therefore their patients, to greater risk of airborne transmission of the virus.

    b. The extent to which the overly complicated operating model structure of SCCL, involving multiple outsourced contracts for the management of category towers and products, impacted on its ability to procure supplies in the early stages of the pandemic, and how this compared to counterparts in Wales, Scotland and NI.[70]

    c. Shortcomings in the regulatory and inspection regime which led to the mass provision of unsuitable supplies to frontline health and care workers.

    d. The fragmented, complex and potentially competing roles of centralised procurement agencies, such as NHS Supply Chain, National Services Scotland, NHS Shared Services in Wales, Business Services Organisation Procurement and Logistics Service in NI, individual NHS Trusts and care providers.

## V. CRONYSIM & PROFITEERING

55. In the early stages of the pandemic, the lack of preparedness, disruption to global supply chains and massive demand made the procurement of key healthcare supplies and equipment extremely challenging. All these points were foreseeable, and all should have been addressed by proper planning well before the pandemic came over the horizon. Instead, by March 2020, the country

[68] INQ000538647 §12
[69] IN0000553497 §13
[70] INQ000539153/57

faced a critical shortage in PPE, there were fears that we would soon run out of ventilators, and there was an urgent need for Covid-19 tests. These shortages would cost lives.

*(i) The "VIP Lane"*

56. Facing critical shortages, procurement processes were hastily assembled by a government in a state of panic and chaos, including through the Parallel Supply Chain for PPE. Orders worth tens and hundreds of millions of pounds were placed at speed under emergency procurement powers without the usual safeguards.[71] In this context, the Inquiry must consider whether the processes that were introduced, including the High Priority or "VIP" Lane ('HPL'), did in fact facilitate the fast purchase of substantial volumes of key medical supplies and equipment from credible suppliers. No other country adopted a similar mechanism.

57. Following the announcement of various drives or "calls to arms" for PPE, ventilators and other equipment in March and April 2020,[72] the evidence shows that civil servants faced the challenge of being inundated with unsolicited requests from government Ministers, Members of Parliament and the House of Lords and senior officials, to consider offers from specific businesses and individuals. Some of the suppliers being proposed were friends of those putting them forward. Others were political donors. Some were companies that the politicians themselves had a formal or informal role in. Although in many cases, little was known about the capability of suppliers to produce what was being promised, there is evidence that politicians pushed aggressively for their contacts to be considered, and demanded updates on the outcome. Gareth Rhys Williams recounts:

> "*The reality is however that ministers and senior officials remained keen to chase the progress of offers and ensure that they were responded to… despite being informed by my team that such chasing was having a negative effect on our ability to work*".[73]

58. CBFFJ UK & NICBFFJ are deeply concerned by the evidence that not only did many of these so-called "*leads*" turn out not to have the supplies in the volume or quantity promised,[74] but they impeded genuine efforts to secure badly needed PPE and other supplies. Max Cairnduff, who led the process that became known as the HPL, describes the ""*noise*" *being generated in the system from the involvement of certain referrers in PPE opportunities*" and the "*scale of the task or diversion which was caused by multiple enquiries*".[75] PPE team slides from 2 April 2020 recorded that "*communications with senior "VIPs*" regarding offers was "*time consuming and distracts Opportunities Team's focus from good sources*".[76] However, instead of seeking to limit the repeated communications and chasers from "VIPs" and offerors, officials responded by focussing on the creation of a process to provide special management, urgent consideration and regular updates in relation to "VIP" referrals. This became known as the HPL and, according to Gareth Rhys Williams, was set up at the request of either Lord Agnew, Matt Hancock or Emily Lawson.

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[71] under regulation 32(2)(c) of the Public Contracts Regulations 2015
[72] INQ000536362/10-11
[73] INQ000535017/36
[74] INQ000534694
[75] INQ000536351/5
[76] Slides cited in Max Cairnduff's WS INQ000536351/7, not yet disclosed to Core Participants

Matt Hancock denies that he was involved in setting it up.[77] Lord Agnew's statement is silent on who was responsible.

59. Under the new process, genuinely credible leads which did not have a "VIP" association were sign-posted to the standard PPE procurement route which started with the submission of a generic survey form via a designated government webpage titled "*Coronavirus support from business*".[78] For example, an email from Mr Cairnduff dated 9 April 2020 stated that offers from a minister or senior official's office[79] should be referred to the HPL email address, whilst "*highly credible offers of large volumes of kit*" should go through the standard route.[80] Further evidence makes clear that the particular focus of the HPL was on political "VIP" referrals, to the exclusion of other offers :

    a. Internal documents refer to the need for a rapid response for "*support provided from high profile people*";[81]

    b. In response to email correspondence from an NHS Trust referring a known supplier with experience of supplying to other public bodies, Max Cairnduff dated stated 3 April 2020: "*I think the default is unless they come from a ministerial office they go to the survey form, which feeds them into a triage team*".[82]

    c. In another message sent on 3 April 2020 he stated that the HPL was the "*best point of contact*" for queries relating to "*a minister's personal contact or introduction*".[83]

    d. On 4 April Mr Cairnduff wrote "*my team is fairly small and tends to be dealing with the politically sensitive ones…".*[84]

    e. He said on 6 April 2020 that the HPL was to be used for "*PPE offers that were a personal recommendation from or contact of a minister or senior official*".[85]

60. It is important that the Inquiry carefully scrutinises the stated justification for the creation of the HPL and the decision to dedicate organisational resource to the management of "VIP" referrals at a time when staff and, particularly, procurement resources, were under unprecedented strain. CBFFJ UK & NICBFFJ endorse the expert evidence of Professor Sanchez-Graells that "*the reasons given for the creation of the 'VIP Lane' are not persuasive because there was no genuine legitimate need for different processing of referred offers simply on the basis of the referral".*[86] In an emergency, in the absence of planning, the common sense approach to any fast track process was to have a swift triage stage with set technical and commercial criteria. Patronage has no place in such a process.

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[77] INQ000536350
[78] INQ000536351/6-7; https://www.gov.uk/coronavirus-support-from-business
[79] or from Google, Rolls-Royce or similar, or a major intergovernmental donation
[80] INQ000534699
[81] INQ000551580
[82] INQ000534690
[83] INQ000534695
[84] INQ000534694
[85] INQ000536351/10
[86] INQ000539153/101

61. A key line of investigation must be the extent to which the HPL turned a blind eye to the risks that this system created of conflicts of interest and referrals based on cronyism and/or corruption. The aims of public procurement regulations are to avoid favouritism and create a level playing field for potentially interested suppliers.[87] The Inquiry may well find that this is exactly the opposite of what the HPL did, in systematising the giving of preferential treatment to those with political connections.

*(ii)* *The "VIP Lane" – case studies*

62. In line with the case studies approach being taken by the Inquiry and in order to illustrate the concerns of the families we represent in relation to the HPL, we focus on the examples of two companies that were awarded significant contracts for PPE in the early stages of the pandemic: SG Recruitment and Meller Designs Ltd.

| **Case study 1: SG Recruitment** | |
|---|---|
| **Supplier** | SG Recruitment, owned by David Sumner, was a small recruitment company. Prior to the pandemic, it employed five staff and specialised in recruiting nurses to the NHS from overseas. Mr Sumner also directed Sumner Group Holdings, SG Recruitment's parent company.[88] |
| **Contracts awarded** | SG Recruitment was given a £23.9 million contract to supply coveralls and a £26.1 million contract to supply hand sanitiser.[89] |
| **HPL referrers** | Lord Chadlington (Actual referral: Lord Feldman). From July 2018 to July 2021, Lord Chadlington was Director of Sumner Group Holdings.[90] He was also non-executive Chairman from June 2020 to July 2021.[91] |
| **Issues with goods supplied** | According to a Freedom of Information request response provided by the DHSC to Spotlight on Corruption, as of June 2021, the PPE provided by SG Recruitment had been found not to be fit for purpose and was marked "*do not supply*" to the NHS.[92] |
| **Profits** | In the year before it was awarded PPE contracts by the DHSC, SG Recruitment turned over less than £500,000 and made a loss of £700,000.[93] In the year covering the contract awards, it made a £1.1 million profit.[94] |
| Mr Sumner was said to be focused in the early stages of the pandemic on obtaining PPE contracts in both the UK and internationally.[95] On or around 10 April 2020, Mr Sumner | |

[87] INQ000539153/12
[88] INQ000493439
[89] INQ000493439
[90] INQ000493439
[91] INQ000530462/3,5
[92] INQ000493433; INQ000493424
[93] INQ000493439
[94] Ibid
[95] INQ000530462/7

asked Lord Chadlington, with whom he had been working for some time, if he could help find out who he should contact for this purpose.[96]

On the morning of 19 April 2020, Lord Chadlington sent a text message to David Cameron stating: "*One of the companies with which I work has 1m masks. And some other PPE. Do you have any contact details for Lord Deighton? I could get them into system today*". Lord Cameron passed on Lord Feldman's telephone number in response.

On the same date, Lord Chadlington sent a text to Lord Feldman stating "*Andrew. I work with company with PPE. D says you are helping. Shall I put you in touch? Peter".* Lord Feldman replied positively and provided his DHSC email address.

Lord Chadlington e-mailed Mr Sumner and Lord Feldman using the e-mail address that had been provided, stating, "*David. This is my friend Andrew Feldman. He can help you with PPE we discussed this morning…."*

Separately, Lord Chadlington also responded to an email from Mr Sumner asking "*..Did we get any PPE into the order through Andrew this morning? Peter*".[97]

On 20 April 2020, in response to a message from Mr Sumner in which he informed Lord Chadlington that quotes were being prepared, Lord Chadlington responded "*Brilliant. Keep going*."[98] Following this, emails show that Mr Sumner kept Lord Chadlington appraised of his progress in securing contracts through the HPL, providing "*real time updates*",[99] as well as confidential documents[100] and ultimately contractual documents.[101] Lord Chadlington replied to one update on 21 April 2020 in which Mr Sumner forwarded an email from Chris Hall: "*Excellent. Looks like you have an inside track. Good luck*."[102]

In response to another update on 21 April 2020, Lord Chadlington responded "*This would be good news if we could make this happen*."[103]

On 26 April 2020, Lord Chadlington emailed: "*Fingers duly crossed. Lets have a chat when we know where we are and what happens next, future orders etc. I should… talk to DC and to Feldman – they've been batting for us on this and I want to say thanks for support. Peter".* [104] Mr Sumner agreed that "*DC and AF have been very supportive*." Lord Chadlington replied "*Once money is in the bank we can discuss next steps*."[105]

On 28 May 2020, Mr Sumner and Lord Chadlington had the following WhatsApp exchange:

*"David Sumner: Hand sanitizer contract in and signed!*

*"David Sumner: $135m of revenue under contract from DHSC for the two contracts!*

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[96] INQ000530462/8
[97] INQ000510459
[98] INQ000510464
[99] INQ000510466; see for example INQ000510504; INQ000510506
[100] INQ000510492
[101] INQ000510498; INQ000510500; INQ000510503
[102] Ibid
[103] INQ000510465
[104] INQ000510467
[105] Ibid

*"Lord Chadlington: Great news. Buying these shares back is going to be more expensive I fear."*[106]

Following agreement of the deals, on 8 May 2020, Lord Chadlington told Mr Sumner that he planned to initiate a discussion with Lord Feldman in order to receive feedback on "*what we have done wrong, what we could do better and how the whole process in general – and how we in particular – are being viewed…*".[107]

Further assistance was provided by Lord Chadlington in relation to bids Mr Sumner made for the Sumner Group to provide nitrile gloves to DHSC in June 2020.[108] Lord Chadlington texted Matt Hancock MP on 6 June 2020 stating "*I chair a company which can provide nitrile gloves as part of your industry partnership initiative. Who do they talk to?"* and was told to contact Lord Deighton.[109] Lord Chadlington advised Mr Sumner to email Lord Feldman mentioning that Lord Chadlington was the company's Chairman and noting that Mr Hancock was involved.[110] He also provided suggested points to cover in the email and looked over a draft.[111]

On 17 June 2020, Mr Sumner sent the following WhatsApps to Lord Chadlington:

"*Have been emailed by DHSC*

*"They want the glove order and have sent draft!*

*"Looks like an initial half a billion"*[112]

On 13 September 2020, Lord Chadlington emailed Mr Sumner:

"*When I was talking to Philip Dunne [Conservative MP and former Health Minister] and talking about your company he said "You sound like an outsourced procurement department for Governments and for business"! I liked that – and I have only slightly editorialised what he said*."[113]

63. The disclosure to date in relation to these contracts gives rise to matters of serious public concern including:

    a. The apparent lack of any identification of Lord Chadlington's conflicts of interest in the HPL referral, despite his position in Sumner Group Holdings and involvement in each of the procurement deals agreed.

    b. The basis upon which SG Recruitment presented it could supply the contracted PPE to the regulated standards, and the basis upon which those who referred, supported and entered into the contract considered it was able to do so.

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[106] INQ000510471
[107] INQ000510470
[108] INQ000510475
[109] INQ000510477; INQ000510476
[110] Ibid
[111] INQ000510478
[112] INQ000510479
[113] INQ000510482

c. The impact that Lord Chadlington's involvement, and the support of Lord Feldman, Mr Hancock and Lord Cameron, had on the decision to award the contracts, and on Mr Sumner's claim that the Sumner Group was approved as a "*authorised rapid response supplier*";[114]

d. The quality of the technical assurance carried out given that the PPE supplied could not ultimately be used.

e. The personal financial gains made by Lord Chadlington (and Mr Sumner) as a result of the transactions. Lord Chadlington accepts that, as a shareholder of Sumner Group Holdings, he stood to gain "indirectly" from profits made by SG Recruitment. He also received payments of director's fees for his role as non-executive Chairman and for consultancy services.[115] The Inquiry must scrutinise his claim that he did not "*receive any payment or renumeration directly in respect of the awarding of contracts to SGRL*", and whether this downplays any profits and fees that he received as a result of SG Recruitment's own drastically increased profits following the award of the government contracts.[116]

f. The extent of loss of public funds, and the waste of resources and time in an emergency in considering these contracts. Lord Chadlington confirms that SG Holdings Ltd has since been forced into liquidation.[117] Media reports suggest that the UK government is unlikely to recover any money for the unusable PPE.[118]

64. Members of the public are further entitled to form their own views as to whether the correspondence disclosed to the Inquiry in relation to this contract is consistent with the accounts provided by Lord Chadlington elsewhere.

65. The second company we highlight by way of example, that was awarded a contract of concern following a referral through the HPL was Meller Designs Ltd; one of the top ten suppliers contracted through the HPL by value of contracts.[119]

| **Case study 2: Meller Designs** | |
|---|---|
| **Supplier** | Meller Designs Ltd, owned by David Meller, is a fashion accessories company. Mr Meller is a Conservative Party donor and has given over £68,000 to the party.[120] He also supported Michael Gove MP's party leadership campaign in 2016, donating £3,250.[121] |
| **Contracts awarded** | Six PPE contracts with a total reported value of £164 million[122] |

[114] INQ000510505
[115] INQ000530462/19 §78
[116] Ibid
[117] INQ000530462/19
[118] Government likely to lose millions in dispute over PPE contract awarded via 'VIP lane'
[119] INQ000528389/69
[120] INQ000493360
[121] INQ000493454
[122] INQ000493454

| | |
|---|---|
| **HPL referrers** | Michael Gove MP, Chancellor of the Duchy of Lancaster (Actual referral: Office of the Government Chief Commercial Officer). |
| **Issues with goods supplied** | More than £8.4 million worth of PPE delivered by Meller Designs was unsuitable for use in an NHS setting. Three of the PPE contracts were signed at above-average prices, with markups of between 1.2 and 2.2 times.[123] |
| **Profits** | Meller Designs reportedly saw profits increase by 9,000% during the pandemic; from £143,000 to £13.2 million.[124] |

An approach was first made by Meller Designs Ltd on or before 31 March 2020, with an offer to supply 40 million FFP3 masks.[125] Mr Meller was calling and chasing multiple officials, as well as ministers, in relation to his offer.[126]

On 3 April 2020, the offer was passed by Lord Feldman onto Andy Wood, who headed the PPE Buy Cell, with the following message:

"*I have just spoken to David Meller (a good friend of Michael Gove) who was asked to source PP3 masks in China. He has managed to do so, and has been given a verbal commitment for 40m masks*."[127]

Lord Bethell, who was copied into the above message, followed up with Andy Wood, urging him to handle the offer and noting that it "*seems like a terrific opportunity*".[128]

Andy Wood responded: "*Thank you. We are on this one with Bruce and team. The price is very high btw. Even in today's market. So will need extra handling.*"[129]

Later on 3 April 2020, the private office of Michael Gove forwarded the offer on to Steve Oldfield, DHSC and Emily Lawson, with the message "*Can someone please pick this up as a matter of urgency?"*[130] The offer was sent to the HPL inbox.[131]

On 4 April 2020 Mr Cairnduff noted that Mr Meller was making multiple contacts to private offices and "*generating a lot of noise in the system*".[132] He said that a final validation check was being conducted and, subject to the outcome of that check, "*a payment for the first shipment of masks should flow fairly shortly*".[133]

Lord Bethell states that he referred David Meller to Jo Churchill following a phone call on 6 April 2020 between Lord Bethell, Mr Meller and Lord Feldman (although the above correspondence shows that he was involved before this).[134] On that date, an email was sent

[123] INQ000493360
[124] INQ000493360
[125] INQ000533868
[126] INQ000533868; INQ000533893
[127] INQ000534834
[128] INQ000534834
[129] Ibid
[130] Ibid
[131] Ibid
[132] INQ000534695
[133] Ibid
[134] INQ000528392/33; INQ000497139

to the office of Ms Churchill requesting that the offer be actioned "*ASAP as Lord Bethell has given David Meller assurances it will be dealt with*".[135] This was forwarded by Ms Churchill's office to Emily Lawson, noting that the email was urgent.[136]

Discussions took place between officials involved in the HPL including on 7 April 2020 in relation to whether a "*fast track process*" was available to "*get [the masks] through to order*" despite the fact that *"he was expensive*".[137]

On 14 April 2020 Max Cairnduff was emailed by an official involved in PPE sourcing [name redacted] who stated:

"*David wants to speak to me today. I don't have a problem speaking to him whilst on leave but I wanted to check on what line I should take on his existing gown offers.*

"*We know that he has Michael Gove's ear, his existing gown offers have been in triage for almost 2 weeks now and judging by [redacted] email – they had 'dropped through the cracks'.*

"*… we all know that private offices will be following that call up fairly quickly with some urgent chasing for clarity*!"[138]

Sometime after the contracts were awarded, in August 2021, it was reported that Mr Gove attended a football match and enjoyed VIP Hospitality with Mr Meller.[139] He later apologised for failing to register the hospitality in the register of members' financial interests.[140]

66. As above, the disclosure in relation to these contracts gives rise to matters of serious public concern including:

    a. The apparent urgency given to Mr Meller's offers given that he was a "*good friend of Michael Gove*" and the level of chasing by Mr Gove and others.

    b. The impact that Mr Gove's involvement had on the decision to award the contracts, and the fact that no conflicts of interest appear to have been identified.

    c. The high prices paid for the PPE and whether this represented good value for money to the public purse.

    d. The quality of the technical assurance carried out given that some of the PPE supplied could not ultimately be used.

    e. The personal financial gains made by Mr Meller as a result of the transactions.

67. A key area for investigation for the Inquiry will be the extent to which the HPL process conferred advantages on suppliers referred through that route compared to those who were directed through

[135] INQ000497141
[136] Ibid
[137] INQ000533885
[138] INQ000533988
[139] INQ000493454
[140] Ibid

the standard route. The starting point should be that the HPL breached the obligation of equal treatment, per *Good Law Project and Every Doctor v Secretary of State for Health and Social Care* [2022] EWHC 46 (TCC). The contention by government witnesses that suppliers via the HPL did not receive preferential treatment does not stand up to scrutiny in light of the evidence before the Inquiry:

a. Officials understood HPL offers to require preferential treatment. An email from Darren Blackburn, head of the sourcing of new PPE supplies within the Buy Cell, responded to an email in relation to a potential new offer on 12 May 2020 (emphasis added):

   "*On what basis is this being passed through to us? Is it because it's a trusted person who we want to engage with - and therefore should come to the following mailbox: covid-ppe-priority-appraisals@cabinetoffice.gov.uk*

   "*Or you are just passing them through as they come to you and not requiring any preferential treatment? If so - wonder if you could direct them to our online portal to register? https://www.gov.uk/coronavirus-support-from-business.*"[141]

b. HPL offers received an expedited response. A process map dated 1 April 2020 describes that "*Opportunities from high profile people require an expedited response… Support provided from high profile people, require a rapid response and managing through the process. Therefore are managed through the High Priority Appraisals Team (formerly VIP)*".[142] The HPL generally aimed to make contact with the supplier within 24 hours of receipt.[143] As noted by Prof Sanchez-Graells, "*this is very important because, in the context of a turbulent market, older offers were taken to be less credible than more recent offers",* and older offers were rejected if not revalidated.[144] This created an advantage for offers that could be processed swiftly after submission to the 'VIP lane'.[145]

c. Involvement of the 'VIP lane' also resulted in lower fallout of offers at the initial stages.[146] Issues such as the incorrect completion of the webform, or a failure to respond to the first three contact attempts were common failings for non-HPL offers. However, *"[t]hose failings were less likely on the HPL offers, where a team member was tasked to collect the data before forming a view as to whether the goods were worthy of follow up and as part of being referred, offerers had provided contact details which they were then unlikely to fail to respond to*".[147]

d. There were known problems with the general survey route.[148]

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[141] INQ000534587
[142] INQ000551580. A version of this process map containing the same text was circulated on 12 April 2020 to Barry Hooper, Lord Agnew, Gareth Rhys Williams, Emily Lawson and Steve Oldfield.
[143] INQ000536351/21
[144] INQ000539153/104
[145] Ibid/105
[146] Ibid/105
[147] INQ000536362/26
[148] INQ000536351/15

e. 'VIP lane' offers were marked and visible as such throughout the process leading to the eventual award of a contract. The Technical Assurance team created a dedicated point of contact that HPL caseworkers could refer offers to.[149]

f. More money was spent through the HPL than through the standard webform procedure. The Cabinet Office assesses total spend by the PPE Buy Cell as £7.2 billion, of which the HPL was £3.7 billion and non-HPL was £2.6 billion.[150] The remainder was spent through the "China Buy programme.[151]

g. There is a strong likelihood that officials felt under increased pressure to agree to deals involving offers that were strongly supported by Ministers.[152] Further, as Professor Sanchez-Graells notes, caseworkers could therefore *"easily have been confused as to whether the origin of 'VIP' treatment was the initial referral or any subsequent operational consideration related to need"*,[153] leading to likely prioritisation.

68. With these factors in mind, it is unsurprising that a higher percentage of offers which came through the HPL route were successful compared to offers which came through the general route. Around 10% of suppliers on the HPL obtained at least one contract compared to around 1% of non-HPL suppliers.[154] This amounted to approximately 50% of the total spend by the PPE Buy Cell. As Professor Sanchez-Graells concludes:

> "*The fact that such unjustified unequal treatment drove close to 50% the value of procurement by the PPE Buy Cell, and significantly increased the likelihood of success of 'VIP' offers seems to me to be downplayed by the Cabinet Office and the Department of Health and Social Care. It is also downplayed by the Government Chief Commercial Officer... ".*[155]

69. A particular concern for CBFFJ UK & NI is the fact that such referrals were prioritised despite awareness on the part of officials that many did not lead to suitable PPE, and despite the financial risk involved. For example, Mr Cairnduff wrote on 4 April 2020 that most of the offers received by the team:

> "*are often cash up front which is potentially very risky if there are then any issues. The other difficulty is that on probing they don't always have the supplies ready to go (often it's more a connection that doesn't really pan out) and when they do they're often not to the required spec*."[156]

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[149] INQ000539153/105
[150] INQ000528389/69
[151] Ibid
[152] INQ000493839 "*the team will be thinking that if they close it down there will be complaints sent to ministers, then down the civil service chain...*"
[153] INQ000539153/106
[154] INQ000536362/25
[155] INQ000539153/108
[156] INQ000534694

70. This was a concern shared by senior officials in other departments. Tom Duke, then a Deputy Trade Commissioner in the FCO, stated in relation to a referral of a potential supplier of PPE, ventilators and test kits from Minister Greg Hands MP:

> "*We're getting chased on this minister hands thing from various sources.*
>
> *"I said this before - if you have an opportunity for a private word you should tell ministers to be very careful when forwarding (and especially chasing) leads like this.*
>
> *"Not commenting on this one in particular. But there are some very questionable ones. And we could spend our entire time only working on things that come from ministers offices, despite the fact that the return rate has been very poor.*
>
> *"Ministers should be especially careful if they are not 100% certain their contacts are not personally profiting from any transaction that will occur."*[157]

71. An FCO official replied:

> *"I fully agree — few of these are credible leads and I suspect that some of those trying to use their contacts with ministers are profiting personally."*[158]

72. Officials were right to have these concerns. According to a Freedom of Information request response provided by the DHSC to Spotlight on Corruption, 50% of the companies channelled down the HPL route provided PPE that was not fit for purpose.[159] As of June 2021, this amounted to £1.9 billion worth of PPE, over half of the total spent on HPL companies.[160] This is a matter of acute public concern. The Inquiry should investigate what the up-to-date figures are for PPE that has been found not to be fit-for-purpose[161] and the impact that this had on the total national supply of PPE during the pandemic and mass difficulties experienced in relation to the supply of defective PPE to health, social care, and other key workers.

*(iii)* *The "Ventilator Challenge"*

73. Suspected patronage and cronyism extended far beyond the HPL. For example, CBFFJ UK & NICBFFJ have serious concerns about the differential approach to companies involved in the Ventilator Challenge, a scheme that was set up on 14 March 2020 to address fears that the country would soon run out of ventilators. The available evidence shows a particular political focus on ensuring that Dyson was awarded contracts for the prototype ventilator that had been developed, despite the fact that it was less advanced than other models in the Challenge and had not yet secured clinical approval.[162] For example, in a meeting on 25 March 2020, despite advice that Dyson's units did not meet specifications and would fail clinical tests, Michael Gove "*acknowledged he was under political pressure to ensure we have followed up with Dyson*".[163] He was described as "*INSISTENT*" that an order be placed.[164] A diary entry by Matt Hancock on

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[157] INQ000493839
[158] Ibid
[159] INQ000493433
[160] Ibid
[161] Seven billion items of pandemic PPE 'not fit for purpose'
[162] INQ000056105; INQ000233775; INQ000528389/106
[163] INQ000535017/41
[164] INQ000496699

or around 25 March 2020 records that "*James Dyson, the vacuum manufacturer, has been contacting numerous people in high places to ensure he has a prominent role. He's continually on the phone, including to Boris, pushing to take part.*"[165]

74. This culminated in a decision to provide a contingent order to Dyson for its model, a decision made by Mr Gove that went against commercial advice and was highly unusual in light of the fact that it was an entirely new design.[166] Sir John Manzoni, former Permanent Secretary for the Cabinet Office, raises further concerns in his witness statement that a meeting took place at the end of March 2020 involving Mr Gove, the MHRA and Mr Dyson in which he was concerned that "*indirect pressure was being placed on the MHRA to approve the supplier's design at the stage of selecting suppliers to progress in the Ventilator Challenge*".[167] By April 2020, when it had become clear that supporting the Dyson model would not be pursued due to clinical viability and functionality, Gareth Rhys Williams was warned by Lord Agnew that:

> "*We are going to have to handle Dyson carefully… I suspect we'll have to buy a few machines, get them into hospitals so that he can then market internationally being able to say they are being used in UK hospitals… we both need to accept that it will be a bigger decision than we can both make. Remember he got a personal call from the PM. This can't be ignored.*"[168]

75. The fact that a serving Minister was prepared to buy and supply ventilators that had not been clinically approved for UK hospitals simply because the supplier was politically connected speaks to an environment and a culture in which political patronage was prioritised above all else. Further, as Prof Sanchez-Graells sets out, decisions made in relation to Mr Dyson would likely have been in breach of the applicable procurement rules:

> *"In my view, the inclusion of Dyson in the 'Ventilator Challenge' and, in particular, the award of a contingent contract were driven by industrial policy considerations-or, in other words, were decisions that sought to favour Dyson's position on grounds that were irrelevant to the procedure at hand. This not only was a breach of the limits on the direct award of extremely urgent contracts… but also an award on non-objective grounds and criteria that could not have been used to justify an award under the procurement rules… At the very least, if implemented within a standard procurement procedure, this intervention would have been a breach of the duty of equal treatment and potentially the materialisation of an impermissible conflict of interest. The fact that this took place outside the remit of the procurement rules on the basis of a non-compliant approach to the direct award of contracts does not reduce its affront to those principles."*[169]

*(iv)* <u>*The culture and reach of cronyism*</u>

76. A key question for this Inquiry to determine is the extent to which political cronyism infected all areas of the government's pandemic procurement drive, and the extent to which it took resources away from the assessment of more credible offers. In this context, the Inquiry must also consider:

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[165] INQ000569777/10
[166] INQ000497031/77
[167] INQ000536361/13
[168] INQ000512992
[169] INQ000539153/130-131

a. The adequacy of safeguards against conflicts of interest and corruption in relation to noncompetitive contract awards to new suppliers in NI, Scotland and Wales.

b. Deficiencies in the due diligence and technical assurance processes in the PPE Buy Cell, and in other procurement operations during the pandemic.

c. Evidence of other VIP Lane style processes in other areas of emergency procurement, such as the priority lane for test and trace contracts.[170]

d. Evidence of political patronage in the award of other contracts across government during the pandemic, such as the award of distribution contracts worth £200 million to Clipper Logistics Plc,[171] chaired by a significant donor to the Conservative Party, having donated £475,000 since 2016.[172]

## VI. DEVOLVED ISSUES

77. Whilst the issues highlighted above were not necessarily evident at a devolved level, different considerations arise which raise concerns that errors have not been identified or lessons learned for the future. An informed assessment of what occurred at a devolved level is complicated in the NI context by the familiar story of an apparent lack of adequate self-reflection on the part of devolved actors to identify what went wrong and how any future response could be improved.

78. That this is again a feature in this Module is apparent, for example, from the evidence of Former Minister Swann. He stated, "*I did not take any additional steps to eliminate fraud or the prevalence of fraud as there is already a robust system in place, nor did I direct the HSCNI to make any changes. ... I believe the processes already in place were highly effective and appropriate and I am not aware of any cases of fraud having occurred.*"[173]

79. That evidence fails to acknowledge that the normal safeguards for procurement were departed from as a result of the urgent need, with contracts awarded without competition, and with the volume of purchases and the price of supplies both significantly increasing. By way of example, the NI Audit Office ('NIAO') procurement report identified that the BSO PaLS monthly spend on PPE prior to the pandemic was £0.25 million, whereas monthly spend during the pandemic was £24.8 million, whilst there was an average cost increase of 957% and 1,314% for gowns and Type IIR masks respectively in the early months of the pandemic.[174] An assertion that there was already a robust system in place does not explain how the Minister factored in these very significant increases in costs and expenditure when reaching his conclusion.

80. It is also not clear how informed the Minister's assertion is that there was no fraud. By way of example, the NIAO report describes how a supplier who received £0.88 million up front then failed to deliver an order for 2.5 million Type IIR masks, which was apparently not recovered.[175] Whilst the report does not state if this was fraudulent, it is difficult to see how else this could have occurred. Furthermore, the NIAO report itself appears equivocal about the robustness of

[170] INQ000521972
[171] IN0000553497
[172] INQ000099593
[173] INQ000538646/36 §111, 115
[174] INQ000281185/11
[175] Ibid, §15

procedures for identifying conflicts of interest. After asserting that arrangements for identifying such conflicts were "*effective*", the report notes "*No BSO PaLS staff have declared any [conflicts of interest], but no further steps have been taken to identify any potential undisclosed conflicts.*" It is not at all clear that leaving it to individuals to self-declare is an effective or adequate safeguard in the circumstances, particularly given the sums of money involved combined, the lack of competition, and the reduced levels of transparency. The blanket nature of the Minister's assertions, combined with a lack of corresponding detail to support them, is instead suggestive of a further failure to engage in self-reflection on what was a significant issue for the pandemic response.

81. This apparent lack of self-reflection also means it is difficult to know whether processes which are outlined on paper in fact correspond to what occurred in practice. For example, the Minister stated: "*the Chief Medical Officer ... were not involved in the procurement of key healthcare equipment and supplies and therefore I had no involvement with them in respect of procurement.*"[176]

82. Yet evidence within the disclosure to this Module suggests the position was not so clear cut. In an email chain[177] beginning on 19 March 2020, an email to the Minister from an individual acting on behalf of NWT Distribution, describing themselves as "*the UK distributor for a well-established Chinese manufacturer of ventilators*" and offering to supply "*20,000+ ventilators, over a 6 week period*" was forwarded by Minister Swann within 10 minutes of receipt, not to BSO PaLS, but to his Permanent Secretary and the Chief Medical Officer. By approximately 11pm that, following a short exchange with the Chief Executive of the BSO in which he [the Chief Executive] welcomes the CMO's involvement, the CMO directs "*consider full approval and please proceed with procurement.*"

83. Aside from concerns about why the CMO appears to have been centrally involved in this decision (in addition to his significant other workload around 19 March 2020, identified at length in previous modules), this evidence is not consistent with the Minister's blanket assertion that the CMO was not involved in such decisions, nor is it consistent with the assertion that the BSO had "*a robust system in place*" to ensure there was no outside influence. Whilst not suggested that the CMO's involvement in directing procurement on this occasion was in any way iniquitous, it is demonstrative of a system that is more fallible that the NI evidence appears willing to acknowledge or reflect.

84. Other aspects of the evidence again suggest limits to which lessons could have been learned. The Minister's statement relies on three documents for his section on "Lessons Learned", including a rapid review, which was a limited exercise commissioned in April 2020, a Serious Adverse Incident report in relation to fit testing of masks, which took years to provide a report, and the NIAO publication referenced above, which itself makes clear "*Further work is required to fully identify lessons learned in respect of PPE supply and procurement during the pandemic.*"[178]

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[176] INQ000538646/14 §28
[177] INQ000503883
[178] INQ000281185/67

85. The lack of information also means it is difficult to identify the scale and significance of issues which have been identified. For example, whilst the Health and Social Care sector was predominantly supplied with PPE by BSO PaLS, within the Independent Care Sector, individual Independent Service Providers procured their own PPE. This apparently resulted in shortages in PPE in the early months of the pandemic, with the NI Assembly identifying that independent suppliers had been struggling to source their own supplies of PPE, apparently until they were given access to centralised procurement.[179] Despite this it is not clear that the issue is settled for future pandemics, with the NIAO suggesting such issues still required to be clarified.[180] We invite the Inquiry to engage in that clarification process, or to otherwise ensure it has been completed.

86. The concern about procurement from the devolved perspective is not limited to devolved decision-making. As a matter of constitutional principle, issues of health and social care, and of procurement, are devolved issues. Ministers for Health and Finance in the devolved administration are accountable to the NI Assembly and ultimately to the electorate in relation to these issues. That democratic accountability would appear to be undermined in circumstances where Westminster acts in a centralised fashion on these devolved issues. By way of example, Conor Murphy, former Minister for Finance, asserted that "*I do not believe that any person or any company received preferential treatment as a result of their status as a donor or as a result of any connection to either MLAs or members of the Executive.*"[181] That may have been so, but given that procurement of supplies on NI's behalf was undertaken by Westminster, NI procurement and supply issues were in fact affected by issues such as the establishment of the HPL (an issue addressed in submissions above). Despite this, those responsible do not appear to have been investigated or held accountable by the NI Assembly, nor would that be expected in the circumstances. That suggests there is an accountability gap in relation to such issues.

87. In practice, there is also evidence arising from reports on procurement and PPE which suggest that scrutiny which has been undertaken has been approached from the perspective of England, or what occurred in NI, but do not consider whether any issues arose from centralised purchases for devolved purposes. For example, it has been suggested that the centralised procurement system managed by the UK government faced difficulties in meeting the unprecedented demand for PPE, and that this led to delays and inconsistencies in the distribution of essential equipment to healthcare providers in NI.[182] However, it is not clear that such issues have been the subject of informed scrutiny by official reports in either jurisdiction. The NIAO report into Supply and Procurement of PPE to Local Healthcare Providers is apparently concerned primarily with procurement and supply issues at the devolved level, and makes only passing mention of supplies provided by England, in the context of mutual aid between NI and the UK. This noted that NI provided 1.8 million items at a cost of £3.5 million to England, and had received 5.9 million items at a cost of £5.3million, although 1.8 million of these items were subsequently withdrawn due to concerns about suitability, with the value of these items unidentified.[183] In contrast, the NAO

[179] INQ0005366335/7 §416-418 and Ibid/8 Recommendation 18
[180] INQ000281185/19 §29
[181] INQ000534957/16 §65
[182] Ensuring the quality and quantity of personal protective equipment (PPE) by enhancing the procurement process in Northern Ireland during the coronavirus disease 2019 pandemic: Challenges in the procurement process for PPE in NI at https://pubmed.ncbi.nlm.nih.gov/35317420/
[183] INQ000281185/40 Fig 7

reports into "*Government procurement during the Covid-19 pandemic*"[184] and on supply of PPE[185] do not mention the extent to which supplies which were procured by Westminster were procured on behalf of the UK including devolved administrations, and were subsequently distributed accordingly. The resulting gaps in accountability arising from the differing focus of such oversight reports hinder an informed assessment of the impact errors at a centralised level had on devolved administrations in relation to procurement and supply during the pandemic. This is not to argue that centralised procurement is not required in such cases, but to identify that if a centralised procurement system is to be recommended, there remains a gap in accountability, which therefore creates a risk that detrimental impacts have not been identified, and will not therefore be resolved in the future. We trust that the Inquiry would seek to fill this accountability gap.

88. A final concern in relation to devolved issues in this Module relates to the individuals who are being called to give evidence before the Inquiry. NICBFFJ would wish to express their disappointment that, notwithstanding the inclusion of two ministers on the witness list, not a single Minister from NI is being called to give evidence to this Module. Whilst civil servants may be particularly knowledgeable about the issues the Inquiry is investigating, ultimately the Minister is the constitutionally responsible actor for any Department. The Minister is obliged to supervise and take responsibility for the acts of their civil servants, and is democratically accountable for their decisions, to the Assembly and to the electorate. The public examinations of their decisions forms part of that process of accountability. This is important as it is not possible to vote civil servants out of office, something the people in NI well know after their recent history of governance by civil servants in the absence of Ministers for extended periods.

89. NICBFFJ respectfully consider that this background ensures that it is particularly appropriate to call Ministers themselves to account for decisions and actions of their Departments during periods when the Executive was in fact in place. If the response of a Minister to questioning in this Module is that they do not know the answer to a particular question, that answer is informative in itself. It is therefore disappointing that the Inquiry will not hear oral evidence from any NI Minister during the course of this Module.

## VII. SUMMARY

90. As in other modules the accounts of family members form the powerful bedrock underlying the reasons for this Inquiry. Many family members whose loved ones were healthcare or social care workers, transport and other key workers, or whose loved ones were cared for by those who had no or inadequate PPE, have suffered the true cost of lack of emergency procurement planning, and the cronyism and profiteering which appears to have filled the void.

91. Much of the evidence disclosed in Module 5 consists of lengthy and dense witness statements packed with procurement law, regulations and practice, together with explanations of emergency measures put in place only after the pandemic arrived. What is not clear in some of those statements is why there was no planning, no significant stockpiling, and why there was no central

[184] INQ000234626
[185] INQ000103864

responsibility for procurement in an emergency. The Inquiry should not ignore the technical aspects of this Module, but neither must it be deflected by them from the real questions.

92. The first point for the Inquiry in this Module is therefore to acknowledge the huge deficits in planning and preparedness regarding procurement, and the consequences. The second issue is whether what was then put in place was done so swiftly and properly, and whether it led to unacceptable practices: patronage, cronyism, profiteering and corruption.

**14 February 2025**

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