

Witness Name: Lesley Fraser

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Exhibits: LF7

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UK COVID-19 INQUIRY MODULE 5

WITNESS STATEMENT BY THE DIRECTOR GENERAL FOR CORPORATE

This statement is one of a suite provided for Module 5 of the UK Covid-19 Inquiry and these should be considered collectively. In relation to the issues raised by the Rule 9 request served on the Scottish Government, in connection with Module 5, the Director General for Corporate will say as follows: -

Overview

1. The Scottish Government's Director General (DG) for Corporate is responsible for the corporate services required by Scottish Government, and also provided on a shared service basis to around 35 public bodies in Scotland. Created in its current form in 2021, DG Corporate includes IT/digital services, communications and ministerial support, corporate transformation and workplace, people, financial management, corporate governance, property and procurement advice, legal, propriety and ethics and the Covid-19 Inquiry response directorate. It is overseen by DG for Corporate, Lesley Fraser.
2. This statement primarily covers areas which DG Corporate is responsible for, apart from paragraphs 24 to 34 which cover areas which DG for Economy, Gregor Irwin, is responsible for, namely the work of the Directorate for Economic Development. However, in order to make it easier for the reader we have included this material in one statement. The Inquiry has been provided separately with details of the Scottish Government organisation structure.

3. The Scottish Procurement and Property Directorate (SPPD) sits within DG Corporate and 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. It facilitates procurement and commercial activities through:
 - Professional procurement and commercial policy and advice
 - Construction procurement policy and advice
 - Property, asset and estate management advice
 - eCommerce, and best practice tools and templates
 - Developing and supporting our staff
 - Reviewing how we manage projects
 - Continuously aiming to improve our performance.
4. Operational procurement services delivered by SPPD include:
 - Awarding national collaborative contracts for commonly used goods and services (e.g. stationery and electricity)
 - Awarding contracts on behalf-of Scottish Government arms-length bodies, such as the Forestry and Land Scotland
 - Awarding contracts for the core Scottish Government.
5. The Director of Procurement and Property is responsible for providing and overseeing the quality of the professional advice and services provided. Ainslie McLaughlin was the Director of SPPD from March 2015 to June 2020. Ainslie McLaughlin is a Chartered Engineer and a Fellow of the Institution of Civil Engineers (ICE). Nick Ford became Director in June 2020 and remains in post. Nick Ford is a Fellow of Chartered Institute of Procurement & Supply (FCIPS) and a Chartered Management Accountant (CIMA).
6. SPPD was made up of six divisions throughout the period in question (1 January 2020 to 28 June 2022):
 1. National Collaborative Procurement Division
 2. Procurement and Commercial Policy and Strategy Division
 3. Procurement eCommerce and Best Practice Division

4. Procurement Services Division
5. Property and Construction Division
6. Directorate Business Management Unit

The legal and regulatory framework

7. The Procurement and Commercial Policy and Strategy Division of the SPPD was, and is, responsible for Scottish national procurement legislation and policy. The Division is not, and has never been, responsible for setting sector or commodity specific policies, procedures or approaches. NHS National Services Scotland (NSS) National Procurement were, and are, accountable for any specific Health approaches, including for the supply of medical equipment and supplies.
8. The legal and regulatory framework underpinning Scottish public procurement includes the following, with the provisions laid out in the documents provided:
 - Public Contracts (Scotland) Regulations 2015 [LF7/001 - INQ000485740]
 - Procurement (Scotland) Regulations 2016 [LF7/002 - INQ000485741]
 - Concession Contracts (Scotland) Regulations 2016 [LF7/003 - INQ000485742]
 - Utilities Contracts (Scotland) Regulations 2016 [LF7/004 - INQ000485743]
 - Procurement Reform (Scotland) Act 2014 [LF7/005 - INQ000485744].
9. On 20 March 2020, the SPPD Directorate issued a national procurement policy note, titled, "Coronavirus (COVID-19): procurement regulations for public bodies SPPN 4/2020", provided: [LF7/006 - INQ000485746], to remind those responsible for purchasing goods, services and works in the Scottish public sector on compliant procurement routes to market. That Scottish Procurement Policy Note (SPPN) and existing legislation recognised that in exceptional circumstances, public bodies in Scotland may need to procure goods, services and works with extreme urgency, providing information on options available to purchasers in these circumstances. The SPPN did not change throughout the pandemic.

10. The above legislation and SPPN 4/2020 underpinned the procurement of any goods, services or works (including those outlined in the Scope for Module 5) before, during and after the pandemic. Public bodies, including government agencies and non-departmental public bodies were responsible for their own procurement decisions.
11. In addition, SPPD stopped and/or deprioritised any non-critical or non-time sensitive work within the Directorate, repurposing resources onto critical deliverables within the Directorate and offering teams and resources to support the Covid response in other areas of the Scottish Government.
12. SPPD aligned its strategy for handling the covid response to the over-arching Scottish Government strategy for managing the economic impacts of Covid-19. A document outlining the SPPD response to Respond, Reset, Restart, Recover is provided: [LF7/006a - INQ000501418].
13. That over-arching Scottish Government strategy was announced in Parliament on 21 April 2020 by Fiona Hyslop, the Cabinet Secretary for Economy, Fair Work and Culture, and included a four-stage plan on Respond, Reset, Restart and Recover. This is provided (page 34): [LF7/006b - INQ000501419].
 - Respond – supporting workers and critical infrastructure
 - Reset – sectoral and regional support and guidance
 - Restart – supporting the re-emergence of business and workforce returners
 - Recover – near terms growth and employment and SG's longer term vision.
14. UK Government's Procurement Policy Notes (PPNs) are relevant to UK Government bodies, including those located in Scotland, but not to Scottish public bodies. Procurement is devolved, and it is Scottish legislation and Scottish Procurement Policy Notes (SPPNs) and Construction Policy Notes (CPNs) that are relevant to Scottish public bodies.
15. SPPD published the following SPPNs and CPNs during the timeframe in question from January 2020 to June 2022. Those specifically aligned with responding to the pandemic have been emboldened for ease of reference.

SPPNs

31 January 2020	Public procurement rules after EU Exit on 31 January 2020: SPPN 1/2020 [LF7/007 - INQ000485747]
31 January 2020	Scottish public sector supplier cyber security guidance: SPPN 2/2020 (updated 9 April 2024) [LF7/008 - INQ000485737]
12 February 2020	Reducing the risk of human trafficking and exploitation in the performance of public contracts: SPPN 3/2020 [LF7/009 - INQ000485739]
20 March 2020	Coronavirus (COVID-19): procurement regulations for public bodies SPPN 4/2020 [LF7/006 - INQ000485746]
26 March 2020	Coronavirus (COVID-19): supplier relief SPPN 5/2020 [LF7/010 - INQ000485748]
14 April 2020	Coronavirus (COVID-19): making best use of procurement resources during COVID-19 outbreak SPPN 6/2020 [LF7/011 - INQ000485749]
4 June 2020	Annual procurement reports, revised procurement strategies and notifying Scottish Ministers: SPPN 7/2020 [LF7/012 - INQ000485750]
12 June 2020	Coronavirus (COVID-19): recovery and transition from COVID-19: SPPN 8/2020 [LF7/013 - INQ000485751]
7 October 2020	Supply chain resilience and diversity: SPPN 9/2020 [LF7/014 - INQ000485752]
9 December 2020	Measuring social impact in public procurement: SPPN 10/2020 (updated 27 March 2023) [LF7/015 - INQ000485753]
17 December 2020	Changes to procurement legislation at the end of the EU Exit Transition Period: SPPN 11/2020 [LF7/016 - INQ000485754]
20 January 2021	Taking account of climate and circular economy considerations in public procurement: SPPN 1/2021 (updated and replaced by SPPN 3/2022 20 June 2022) [LF7/017 - INQ000485755]
12 March 2021	Procurement activity during the Scottish Parliament election period: SPPN 2/2021 [LF7/018 - INQ000485756]
15 March 2021	Implementation of Fair Work First in Scottish Public Procurement: SPPN 3/2021 [Withdrawn and superseded by SPPN 6/2021]

14 July 2021	Annual procurement reports for 2020 - 2021: revised procurement strategies and notifying Scottish Ministers: SPPN 4/2021 [LF7/019 - INQ000485757]
18 August 2021	Procurement - changes to legislation following the UK's exit from the EU: SPPN 5/2021 [LF7/020 - INQ000485758]
24 September 2021	Fair Work First implementation - Scottish public procurement update: SPPN 6/2021 [Withdrawn and superseded by SPPN 1/2024]
6 December 2021	Preparing to transition towards a National Care Service for Scotland: SPPN 7/2021 [LF7/021 - INQ000485759]
13 December 2021	Procurement thresholds and VAT inclusion in estimated contract value: SPPN 8/2021 [LF7/022 - INQ000485760]
4 April 2022	Public procurement - Russian and Belarusian companies: SPPN 1/2022 (updated 5 August 2022) [LF7/023 - INQ000485761]
7 April 2022	Public procurement - prompt payment in the supply chain: SPPN 2/2022 (updated 22 April 2022) [LF7/024 - INQ000485762]
20 June 2022	Public procurement - taking account of climate and circular economy considerations: SPPN 3/2022 [LF7/025 - INQ000485763]

CPNs

9 April 2020	Coronavirus (COVID-19): impact on construction contracts: CPN 1/2020 [LF7/026 - INQ000485764]
14 April 2020	Coronavirus (COVID-19): Project bank accounts signing requirements during COVID-19 CPN 2/2020 [LF7/027 - INQ000485765]
28 May 2020	Coronavirus (COVID-19): preparations for contracting authorities to restart the procurement and management of construction contracts: CPN 3/2020 [LF7/028 - INQ000485784]
28 May 2020	Coronavirus (COVID-19): managing disputes and cashflow: CPN 4/2020 [LF7/029 - INQ000485766]

17 June 2020	Coronavirus (COVID-19): CPN 1/2020 duration extended: CPN 5/2020 [LF7/030 - INQ000485767]
24 June 2020	Coronavirus (COVID-19): CPN 2/2020 duration extended: CPN 6/2020 [LF7/031 - INQ000485768]
12 August 2020	Project Bank Accounts: availability and accessibility to subcontractors - CPN 7/2020 [LF7/032 - INQ000485769]
31 August 2020	Construction Phase Handbook Chapter 3: quality - client guide to construction contracts: CPN 8/2020 [LF7/033 - INQ000485770]
15 September 2020	Guidance on contract amendments to payment terms and the use of Construction Procurement Route 1A (Quick Quote): CPN 9/2020 [LF7/034 - INQ000485738]
24 March 2021	Sustainable tender pricing: CPN 1/2021 [LF7/035 - INQ000485771]
3 June 2021	Conflict avoidance - early intervention to avoid disputes: CPN 2/2021 [LF7/036 - INQ000485772]
28 July 2021	Resources for construction projects: CPN 3/2021 [LF7/037 - INQ000485773]
28 October 2021	Construction procurement - assurance of work on site: CPN 4/2021 [LF7/038 - INQ000485774]
23 March 2022	Construction capability assessment tool: CPN 1/2022 [LF7/039 - INQ000485775]

16. The legislation and relevant SPPNs and CPNs, as outlined in the tables above, applied to the purchase of any goods, services or works during the pandemic. SPPNs and CPNs provide updates to Scottish public bodies on legal and procurement policy developments.
17. NHS NSS National Procurement and/or the relevant PPE or other commodity teams would need to interpret the legislation and guidance for their own public bodies to ensure that any sector or commodity specific policies, procedures or approaches complied with all relevant legislation.
18. Aside from the SPPNs and CPNs referred to above, SPPD is not aware of any other policy or guidance provided to Scottish authorities from central government

during the period in question that would apply to the procurement of PPE and ventilators or the manufacture and distribution of testing kit (PCRs and LFTs).

Prior to the pandemic

19. Regulations 33 and 72 of the Public Contracts (Scotland) Regulations 2015, and regulation 6 of the Procurement (Scotland) Regulations 2016 allow for both the direct award of a contract (regulation 33 of the 2015 Regulations and regulation 6 of the 2016 Regulations) and the modification of an existing contract (regulation 72 of the 2015 Regulations) without any competition. There is a documented and controlled approach to handling and publishing direct awards in the Scottish Government to underpin compliance with the legislation (detailed in section 4.8 of the Procurement Policy Manual, provided: [LF7/040 - INQ000485777]). This includes clear delegation of authority. During the pandemic, the value of local delegation of authority within Scottish Government was increased from £10,000 to £50,000. Above these thresholds all requests for the direct award of contracts within Scottish Government were required to be submitted to SPPD for consideration and approval or otherwise.
20. On 20 March 2020, SPPD put in place the temporary increase of the Non-Competitive Action (NCA) limit of up to £50,000 for Deputy Directors and above in Scottish Government to support our immediate response to Covid-19 and help address extremely urgent circumstances arising from the outbreak. The notification of the temporary arrangements outlined that the increased limit applied in the following circumstances:
 - Extreme urgency due to unforeseeable circumstances, covering the immediate need e.g. a need to respond to the Covid-19 consequences immediately, because of public health risks, loss of existing provision at short notice, or as a reaction to a current situation that is a genuine emergency - not planning for one;
 - Additional purchases are required from the same supplier due to unforeseeable circumstances e.g. there has been an increased requirement as a result of the Covid-19 outbreak;
 - Only one possible supplier e.g. there is only one supplier with the expertise to do the critical work needed to respond to the outbreak, produce the product or with capacity to complete on the scale required.

21. A decision was taken by SPPD to end the temporary arrangements on 31 August 2020. This was because the situation concerning requests for NCA within Scottish Government had stabilised and, in general terms, it would be more challenging from a procurement rules perspective to demonstrate grounds of extremely urgent circumstances arising from the Covid-19 outbreak.
22. The number of direct award 'requests' considered through the NCA processes, regardless of thresholds, before and during the pandemic was as follows:
- 2019-2020: 107 of which 79 (74%) were approved (remainder declined or withdrawn - for example, where an alternative route to market has been identified)
 - 2020-2021: 166 of which 115 (69%) were approved (remainder declined or withdrawn - for example, where an alternative route to market has been identified)
 - 2021-2022: 130 of which 104 (80%) were approved (remainder declined or withdrawn - for example, where an alternative route to market has been identified)
23. SPPD was not responsible for, nor involved in, any processes that were in place to check that healthcare equipment supplied to the NHS met the technical/regulatory specifications for goods for the NHS; NHS NSS National Procurement staff were responsible for this. Counter-fraud measures relevant to the Scottish Government are described at paragraphs 56 to 58 below.

During the pandemic (January 2020 to 28 June 2022)

General - Roles and responsibilities relating to procurement during the pandemic

24. In the initial phase of the Covid-19 pandemic (mid-March to July 2020), the Scottish Government's Directorate for Economic Development (DED), Scottish Enterprise (SE) and Scottish Development International (SDI), which is Scotland's trade and inward investment agency and a part of Scottish Enterprise) were working to support efforts to procure PPE, hand sanitiser and equipment needed by NHS NSS. The role of DED and SE in direct procurement of pandemic-related supplies was limited to hand sanitiser and related bottle products, all of which are detailed in

paragraph 42 The primary task given to DED and SE was to facilitate effective engagement between Scotland's manufacturing supply chain and NHS NSS.

25. In mid-March 2020 the Minister for Trade, Investment and Innovation (Ivan McKee MSP) initiated work to help the Cabinet Secretary for Health and Sport (Jeane Freeman MSP) in responding to NHS procurement pressures, caused by unprecedented global demand for PPE and the resulting disruption to supply chains. As a result, a strategy for supporting procurement of PPE, other consumables and equipment was developed in collaboration between DED, SE, SDI, NHS NSS, and the National Manufacturing Institute Scotland (NMIS). NMIS, operated by the University of Strathclyde, is supported by the Scottish Government and SE among other funders. It offers a network of world-class manufacturing research and development facilities to help businesses find technology solutions to help them succeed. DED and SE asked for the support of NMIS both to help process support offers from businesses and to provide innovation support to manufacturers.
26. The strategy for supporting NHS 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.
27. Scottish Government's supply chain activity supported the 'make' and 'buy' strategy in several ways, including:
 - The Minister for Trade, Investment and Innovation issued a public letter, provided: [LF7/041 - INQ000485778], to the business community distributed via the main business organisations (e.g. CBI Scotland, Scottish Chambers of Commerce and Federation of Small Business) and to companies account managed by SE seeking their support in sourcing pandemic supplies;
 - SE helped to distribute details of product specifications and volumes required by NHS NSS and helped to manage the responses received;
 - DED, SE and NMIS worked together to assist NHS NSS's National Procurement team triage potential suppliers (the 'buy' strategy) and/or to develop new supply chain manufacturing capability in Scotland (the 'make' strategy);

- The Minister for Trade, Investment and Innovation chaired daily conference calls with a working group comprising Scottish Government officials, NHS NSS, SE, SDI and NMIS. The action log for the group is provided: [LF7/042 - INQ000485776]. This working group was not a decision-making forum nor did it have budget; rather it coordinated and oversaw cross-agency activity to process the business offers received, to scrutinise potential suppliers and to support new domestic supply chains.

The 'make' strategy

28. The 'make' strategy was domestically focussed. It was designed (a) to help producers understand the requirements of NHS NSS (i.e. the volumes, timescales and product specifications of their requirements) and (b) to use DED's and SE's networks to locate producers in Scotland who had the technical capability and flexibility to expand and / or diversify their production to manufacture quickly the products required.
29. In relation to part (a) of the 'make' strategy, as noted above, SE helped to distribute details of product specifications and volumes required by NHS NSS and helped to manage the responses received.
30. DED was well-placed to deliver part (b) of the 'make' strategy. This was because the Manufacturing and Industries Division of DED is responsible for Making Scotland's Future – the Scottish Government collaborative initiative to support advanced manufacturing in Scotland – and has deep connections with Scotland's manufacturing sector. Staff in DED, SE and NMIS 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 to support national requirements. Other efforts were also made, for example to promote the UK Government's open innovation challenge for manufacture of medical ventilators.
31. The 'make' strategy helped to establish several new domestic supply chains and supported greater self-sufficiency for Scotland – for example:
 - A hand sanitiser supply chain was created at Grangemouth, using spirit from Scottish distillers and Scottish bottling capacity

- A non-sterile gowns supply chain was created utilising fabric produced in Forfar for garment manufacture in Glenrothes and Livingston
- Plastic production facilities in Greenock and Dumfries were repurposed to produce disposable aprons
- Visors were produced in Annan and a new supply chain for face masks (FFP3) was established in the south of Scotland using input materials produced in Angus.

The 'buy' strategy

32. Despite the focus on working with Scottish manufacturers to redirect or expand production of key products, PPE / equipment also had to be acquired through international supply chains. This included ventilators, oxygen equipment and materials in the test and vaccination supply chains. SDI provided immediate support to the 'buy' strategy. SDI has offices worldwide and that network was made available to support NHS NSS. SDI staff used their local knowledge, connections and expertise to:
 - Distribute lists of the products, standards and quantities required by NHS NSS
 - Support verification of new suppliers by checking certificates of authenticity and export licences
 - Make factory visits to provide further assurance.
33. Further information on the numbers and costs of ventilators, oxygen equipment and materials in the test and vaccination supply chains that were acquired through international routes will be held by NHS NSS as the body responsible for the procurement of NHS Scotland medical equipment and supplies.
34. SDI 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. This work was referenced in the statement the Minister for Trade, Investment and Innovation (Ivan McKee) made to the Scottish Parliament on 27 May 2020, provided: [LF7/043 - INQ000222914], in which he mentioned seven recent charter flights bringing face masks, gowns, test kits and infusion pumps plus ventilators and oxygen concentrators arriving from the USA and China.

Use of public funds

35. A further supply side challenge that the Scottish Government faced lay in conducting due diligence to verify the legitimacy and quality of items produced by Scottish businesses that offered to supply PPE and other relevant equipment. A contract was awarded to Snapdragon by the Scottish Government to provide due diligence data on suppliers offering PPE for non-health organisations. Further information on Snapdragon is detailed in paragraph 48.
36. The work of the Supply Chain Programme is summarised in greater detail in a statement the Minister for Trade, Investment and Innovation made to the Scottish Parliament on 27 May 2020, provided above, and a report published by the Scottish Government on 4 June 2020, provided:[LF7/044 - INQ000474199].
37. During the pandemic period Procurement Services Division (PSD) in SPPD procured goods and services on behalf of the core Scottish Government Directorates and some goods and services on behalf of Scottish Government arms-length Agencies and non-departmental public bodies (NDPBs). PSD does not, and did not, routinely purchase goods or services on behalf of healthcare or social care organisations. PSD therefore did not make use of global supply chains to procure PPE, ventilators and LFT and PCR tests. However, SPPD did buy air freight on behalf of the NHS, of which details are provided later in this statement.
38. Prior to the pandemic, the Scottish Government did not have an existing framework for procurement of key healthcare equipment and supplies because the NHS, not Scottish Government, was responsible for buying healthcare equipment and supplies. During the pandemic a new supply framework was put in place for organisations providing non-health essential services who had no or limited access to PPE. The framework was awarded to Lyreco, who, as an existing framework supplier of Office supplies, SPPD knew already had a robust distribution network in Scotland. Due-diligence to check that Lyreco met statutory duties, including equalities duties, was carried out during the award of the Office Supplies Framework (in 2016) and was relied upon regarding Lyreco meeting its legal obligations, including equalities duties.

Procurement of key healthcare equipment and supplies for key industries with significant overlap with the health sector

39. SPPD did not carry out procurement (or arrange for procurement) of key healthcare equipment and supplies for the use by contractors who carried out non-healthcare roles in hospital or healthcare settings. NHS procurement officials were responsible for buying those supplies.
40. In terms of the death management sector, funeral directors were classified as essential workers and could use the Lyreco Framework (see paragraph 38). A private supplier of funeral supplies offered to make available body bags to others with difficulty sourcing, though SPPD did not set up any contract with the supplier. SPPD shared the details with Burials and Cremation Policy team in Scottish Government to share as necessary to those in need.
41. For non-health organisations and essential services with no or limited access to PPE or other key healthcare equipment the Lyreco Framework was available. Lyreco charged those using the framework at cost of sales (i.e. no profit was made by Lyreco for these goods).
42. Throughout the period of interest to the Inquiry (January 2020 – June 2022) no part of the Scottish Government was directly responsible for buying key healthcare equipment and supplies for health and social care. SPPD did, however award the following contracts for PPE-related supplies or logistics, either for non-health essential services or on behalf of the NHS:

PPE-related supplies or logistics	Supplier	Value
PPE	Lyreco Framework	Contract award allowed spend of up to £20m (final spend was £2.8m)
Hand sanitiser bottles	Richmond Containers	£52,290
Bottling of Sanitiser	Traderight International	£112,000 and £28,000
Hand sanitiser	MacPhie	£83,000
Hand sanitiser and bottles	Beauty Kitchen	£201,800
Hand Sanitiser HDPE Bottles and Caps	Carrick Packaging	£55,046
Freight of essential PPE from Far East directly to Prestwick for NHS	Kuehne & Nagal	£2m

43. The air freight (with Keuhne & Nagal) from China direct to Prestwick was arranged by SPPD, where NHS NSS National Procurement collected the stocks from the freight carrier. Some media coverage confused this delivery with air-freight that was arranged by the UK Government (from Turkey), however these were completely distinct PPE purchases and freight contracts.

44. Regarding the Lyreco contract, the £20m value was an estimate at the time of putting the framework in place. Actual total spend was a fraction of this, at approximately £2.8m. Lyreco was an intermediary in the sense that they were engaged to source PPE and act as a distributor. The other contracts in paragraph 42 were awarded directly to manufacturers.

45. SPPD does not hold detailed information regarding other public bodies' contracts and purchases.

Contractual Monitoring, Compliance and Enforcement

46. The NHS and Local Authorities were responsible for their own general approach adopted to the efficient and effective management of contracts for the procurement, specification, and performance management of the sourcing and distribution of key healthcare equipment and supplies (with the exception of those contracts listed at paragraph 42 where SPPD procured on behalf of other organisations). The Scottish Government's PPE Directorate managed the Lyreco Framework for non-health essential workers. Daily calls were held, and reports provided by Lyreco on stock position, product ordered and in transit. These documents have been provided to the Inquiry. Products were bought by organisations directly from Lyreco Webshop. Further information is provided in the Module 5 DG Health and Social Care corporate statement.

Financial Risk Assessment

47. SPPD teams were not responsible for the buying of key healthcare equipment and supplies for healthcare or social care workers and so did not assess the financial risk posed by would-be suppliers for any substantial contracts, with the exception of the Lyreco contract for non-health essential workers. In addition, with the exception of one contract (see paragraph 51) payment for all goods and services listed at paragraph 42 were paid for after delivery, in line with Scottish Government terms and conditions, and in line with Scottish Public Finance Manual so financial risks were managed. Lyreco was an existing and trusted national framework provider for office supplies. Financial due diligence had been carried out in 2016 (it was conducted when Lyreco was appointed as a national supplier in 2016). In short, Lyreco was already established as a trusted and financially-stable supplier through the application of procurement professional standards in accordance with best practice. Lyreco was responsible for securing its own supply chain.

48. The Snapdragon contract (offered at cost without profit) was put in place to conduct company and product validation checks on offers that the NHS had deemed unsuitable but that might be of use to other public bodies (Lyreco was responsible for conducting this research on their own suppliers). This resulted in none of the offers forwarded to Scottish Government for PPE being taken forward, for example because firms were not established suppliers of PPE or had very short trading histories. For other smaller value products (e.g. hand sanitiser) payments were

made in line with Scottish Government standard terms and conditions after products were received i.e. no advance payments (with exception detailed at paragraph 51).

49. Snapdragon is a small firm (a Small or Medium Enterprise - SME) based in Edinburgh, who checked validity of suppliers to ensure they were legitimate PPE suppliers. NHS NSS set up an online portal for offers of products which they then internally checked for supplier and product conformance. Any offers which they deemed not required by the NHS they offered to Scottish Government to consider for wider public bodies. Snapdragon was engaged to research risks associated with these suppliers which resulted in none of the offers forwarded to Scottish Government for PPE being taken forward for contracts. As no awards were made, no further checks of Snapdragon's monitoring were necessary. There was not, and is not, a single benchmark that can be used for all suppliers of all products or services, in all circumstances – there are just too many variables and this is normal in procurement professional standards. Snapdragon researched the companies that made offers, provided the findings of that research to the Scottish Government, and then buyers used their professional judgement to decide whether to explore offers further. No offers were found to be risk-free and so no offers were progressed.

50. Scotland's NHS bought PPE through one primary route – NSS National Procurement who had visibility of stocks and imminent deliveries. Social care also had access to NHS Scotland-sourced PPE as a 'top-up service' for use when other routes were limited, and social care providers were concerned that their stocks were running low. SPPD facilitated active exchange of information across Scotland's public procurement community (further detail given at paragraphs 69 to 73), sharing information on stocks and orders to assist one-another wherever possible. For example, SPPD set up and ran regular meetings of a Scottish Government group for Police Scotland, Scottish Prison Service and Scottish Fire and Rescue i.e. those non health organisations in the Scottish Government with PPE demand, to work together to agree an approach to share information and PPE products. Another example is when Local Government procurement leads reported that they were running low on stocks of examination gloves; NSS National Procurement was able to advise that there was, for example, a container of gloves that had passed through an English port and was imminently arriving in Scotland. Therefore, Local Government was assured that their stocks would be replenished within 24hrs (i.e. while 'local' stocks sometimes appeared to be low, there were enough gloves in stock and on the road

to continue to meet the demand at that time). For this reason, SPPD did not need to explore supply routes that Snapdragon identified as having no history of supplying PPE. There is detail within paragraphs 54 and 55 of one of the forums through which the exchange of information on stocks and deliveries was shared.

51. Paragraphs 47 to 49 explain how risk in offers was assessed. As outlined within paragraph 37 very few contracts/frameworks relating to PPE were awarded by SPPD. SPPD did not deem any of the suppliers they awarded business to be 'high risk'. In addition, with the exception of one contract, payment was made either after delivery, in line with Scottish Government terms and conditions, and the Scottish Public Finance Manual so any risks that were present were reduced. One contract with Trade Right international required partial (25%) payment up-front to secure the goods, with the balance due after delivery (see paragraph 42, total contract value £112,000). As a result, SPPD did not have any contracts which were terminated, reported for fraud, or that resulted in contractual dispute.

Direct Awards

52. SPPD has a clear NCA process with delegated accountabilities, tracking and recording Scottish Government NCA requests and whether they are approved or not. The number of direct award 'requests' considered through the non-competitive award processes, regardless of thresholds, before and during the pandemic can be found at paragraph 22 above. However, with the exception of contracts listed at paragraph 42, SPPD does not (and did not throughout the pandemic) buy healthcare equipment and supplies for health or social care.
53. As detailed within paragraph 19 of this statement, regulation 33 of the Public Contracts (Scotland) Regulations 2015, and regulation 6 of the Procurement (Scotland) Regulations 2016 allow for the direct award of a contract whilst regulation 72 of the 2015 Regulations allows for a modification to an existing contract, without any competition where circumstances exist. SPPN "Coronavirus (COVID-19): procurement regulations for public bodies SPPN 4/2020" made clear to public buyers across Scotland that they must, throughout the pandemic, continue to comply with those Regulations that were already in place prior-to the pandemic. The note also provided information on options available to purchasers in exceptional

circumstances. It also reminded them that they must keep records to justify any decisions to support subsequent audits. Requests for non-competitive awards in the Scottish Government were judged on whether or not circumstances were 'exceptional' on a case-by case basis, considering potential routes to market and whether the need could reasonably have been foreseen for each non-competitive action considered.

54. It would be for NSS National Procurement to set out how they interpreted existing legislation in their purchase of key healthcare equipment and supplies, including direct awards. SPPN 4/2020 set out the legislation that already existed regarding direct award to ensure that buyers understood their obligations in relation to relying on direct award (including extreme urgency). Those obligations apply now, just as they did during the pandemic. As it is for individual public bodies to interpret the procurement legislation for their own buying activity, there was no over-arching decision made by Scottish Government that would apply to the NHS that direct awards were no-longer justified:

SPPN Extract

"23. COVID-19 is serious and its consequences pose a risk to life. Public bodies are able to enter into contracts without competing or advertising the requirement where specific circumstances apply. See Annex E for a list of options and the tests that apply.

24. In all circumstances where a direct award is made, public bodies should keep a written justification that satisfies these tests and they should limit requirements to only what is absolutely necessary for the period that extreme urgency reasons apply, both in terms of what is being procured and the length of contract.

25. It is also important to undertake a separate assessment of the ongoing applicability of tests before undertaking any subsequent or additional procurement to ensure that they are all still met, particularly to ensure that the events are still unforeseeable. For example, as time goes on, what might amount to unforeseeable now, may not do so in future.

26. Delaying or failing to do something in time does not make a situation qualify as extremely urgent, unforeseeable or not attributable to the public body. This is because procurement rules expect a public body to plan its time in order to use a competitive procedure."

55. Scottish Government relied on pre-existing policies and legislative obligations to ensure transparency. For example, regulation 51 of the Public Contracts (Scotland) Regulations 2015 and regulation 7 of the Procurement (Scotland) Regulations 2016 [LF7/002 - INQ000485741] require public bodies to publish contract award notices for procurements within 30 days of the award of the contract. During the period in question, the Scottish Government published relevant notices and a contracts register in a single, publicly available online portal. SPPD also reminded buyers of this in SPPN 4/2020. In addition, in order to ensure transparency of government spending, SPPD publishes an annual procurement report including for the years for 2020/21, provided: [LF7/045 - INQ000485780], and 2021/22 provided: [LF7/046 - INQ000485781].

Identification and handling of Fraud and/or Suspicious Opportunities

56. There have been no concerns regarding, or instances of, fraud in relation to procurement or award of contracts pre pandemic (2009 to 1 January 2020), during the pandemic (1 January 2020 to 28 June 2022), and post pandemic (29 June 2022 to date). There were no approaches made to, or bids or contracts entered into by, SPPD during the pandemic which SPPD treated as suspicious or fraudulent, or any arising in prosecutions.

57. Since no offers progressed to the point at which they would be checked for suspicion of fraud, SPPD identified no concerns with existing protocols and so has not identified any lessons to be learnt for the future in relation to the handling of fraud and/or suspicious opportunities. The Scottish Government has not lost money as a result of fraudulent contractors of key healthcare equipment and supplies, though it should be noted again that SPPD does not buy healthcare equipment.

58. Although not directly relevant to purchases of PPE made by NSS National Procurement (who have their own fraud-prevention policies and procedures) Scottish Government policies and procedures for fraud-prevention in public procurement are set-out in the Scottish Public Finance Manual, provided: [LF7/047 - INQ000485782], and in the Procurement Journey, provided: [LF7/048 - INQ000485783].

Conflicts of interest

Civil Servants

59. The People Directorate within DG Corporate lead on Human Resource (HR) matters within the Scottish Government. Civil servants are required to declare their outside interests, underpinned by the duties set out in the Civil Service Code (see paragraphs 7,9 and 15), provided: [LF7/049 - INQ000131054] and the Civil Service Management Code (see sections 4.1.3 and 4.3), provided: [LF7/050 - INQ000501424]. From January 2020 to 28 June 2022 the policy was available to all SG staff via the SG intranet site 'Saltire', provided: [LF7/051 - INQINQ000501422], [LF7/052 - INQ000501423]. This policy was updated at the end of July 2024 to align with changes in the UK Government framework guidance.
60. The policy directed staff to raise any relevant outside interests with their line manager in the first instance, with the option to contact Scottish Government HR for advice and support. Following line manager review, should the outside interest be deemed relevant to the individual's official duties, the policy directed the staff member to register their interest on the Scottish Government online system that was in operation at the time, "e-HR", which allowed for the outcome, any supporting comments, and the date the interest is no longer held to be recorded. The data entered into e-HR forms the corporate Register of Interest. e-HR will be replaced with a new online HR system for recording entries in October 2024 and final reports have therefore been downloaded from e-HR to be retained in line with GDPR set out within the People Directorate Privacy Notice. The declaration and management of interests policy has been refreshed to support the new system functionality.
61. A report on outside occupations held by senior civil servant staff is published annually, and members of Corporate Boards also have additional reporting requirements to disclose interests as part of the annual accounts process.

Ministerial

62. The Directorate for Communications and Ministerial Support within DG Corporate lead on matters related to the Scottish Ministerial Code. During the pandemic, the 2018 edition of the Scottish Ministerial Code was in place, provided; [LF7/053 - INQ000102901]. The Ministerial Code is a code of conduct that applies to all

Ministers and provides guidance to Ministers on how they should act and arrange their affairs in order to uphold the highest standards of propriety.

63. Ministers must ensure that no conflict arises or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.

64. Section 11 sets out the guidance on the declaration of Ministers' interests. Ministers are required to provide the Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict in relation to their Ministerial office. Ministers must also record in writing what action has been taken to avoid a conflict of interest and are expected to inform the Permanent Secretary at the earliest opportunity if there is any change in their interests. Section 11.11 states:

"Ministers are reminded that the provisions of the Ministerial Code are additional to the requirements of the Interests of Members of the Scottish Parliament Act 2006, which apply both to Ministers who are MSPs and to the Law Officers. Guidance on the registration and declaration of Members' financial interests is set out in the Code of Conduct for Members of the Scottish Parliament."

65. The Code of Conduct for Members of the Scottish Parliament is the responsibility of the Scottish Parliament, as is the published register of interests which is available on the Scottish Parliament website, dating back to 2014.

66. The Scottish Ministerial Code was updated in July 2023, provided: [LF7/054 - INQ000501425]. This edition of the Code introduced the proactive publication and annual review of Minister's declared interests on the Scottish Government website and Ministers' declarations are available at online along with information about any actions they have taken to avoid a conflict of interest or a perception of one, provided: [LF7/055 - INQ000501426].

67. A further edition of the Ministerial Code, in the current First Minister's name, will be published in due course.

68. No conflicts of interests by Civil Servants or Ministers were identified for the contracts managed by the Scottish Government relevant to the scope of Module 5.

Co-ordination across Scottish Government and with other bodies

69. During the Scottish Government's response to Covid, SPPD coordinated the exchange of intelligence regarding PPE stocks in Scotland through an informal group formed of procurement leads from NSS National Procurement, Scotland Excel, Advanced Procurement for Universities and Colleges (APUC), and the Central Government sectors. This informal group was called the 'COE PPE Group' (Centre of Expertise PPE Group), referring to interactions between the Scottish public sector centres of procurement expertise. The group first met on 17 April 2020. The members changed over the period and included:

- Graeme Cook – Scottish Government
- Ian Howie, Scottish Government
- SPPD officials – Scottish Government
- Health Finance official - Scottish Government
- Head of PPE Team - Scottish Government
- PPE Team officials – Scottish Government
- Strategic Sourcing Director, NHS NSS
- strategic sourcing manager, NHS NSS
- Head of Strategic Sourcing & Commercial, NHS NSS
- Head of Estates and Facilities, APUC
- Head of Strategic Procurement - Scotland Excel
- Chief Executive - Scotland Excel
- Strategic Programme Manager - Scotland Excel
- Procurement Managers - Scotland Excel.

70. This group was informal with no minutes taken. An agenda was provided to aid discussion, examples are provide: [LF7/056 - INQ000501420], [LF7/057 - INQ000501421].

71. The Scottish Government was aware of critically low stock levels, which were advised verbally by members of the group. The exchanges within, and between, members of this group enabled different parts of the public sector to highlight low stocks, imminent deliveries, or large stocks to one another. Other group members offered, where possible, to support any short- term gaps. Stocks of PPE and hand sanitiser were shared between different parts of the public sector. This exchange of

intelligence happened through different methods, including regular calls and email, however, this group did not have a record of any concerns of low stock of PPE or hold a record of movement of stock between organisations.

72. In addition, regular communications were set up with Scottish Government arms-length organisations such as Scottish Prison Service, Scottish Fire and Rescue Service, and Police Scotland to flag shortages of PPE and if others could help. Different sector leads communicated with their sectors. Scottish Government communicated with its agencies and non-departmental public bodies.

73. In addition to successes in ways of working across the Scottish Government and with other Scottish bodies, there were also challenges with cross-government working. Once such example was when the UK Government's Department for Health and Social Care (DHSC) requested demand volumes of PPE as part of 4-nations volume in order to provide numbers to the EU for an EU negotiation. The required information was gathered and submitted from the Scottish Government to DHSC within the very short timeframe. The short turnaround time to supply the information was challenging as the information had to be gathered from a range of NHS and non-health organisations including Local Authorities and emergency services organisations.

Lessons learned

74. In terms of internal reviews and lessons learned activity, SPPD contributed to lessons learned exercises led by PPE directorate. Full detail of this are provided within the DG Health and Social Care Module 5 corporate statement.

75. 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.

76. Areas for improvement were also detailed. For example, it notes that bolstering resilience for non Health and Social Care sectors should be embedded into future

resilience planning to reduce the future need for similar frameworks. It also notes that there could have been better interrogation of demand signals at the outset of the framework and any future considerations should explore ways to have a better understanding of demand. The evaluation is provided: [LF7/058 - INQ000470072].

77. The sourcing and distribution of PPE in Scotland was enabled through networks, professional relationships, collaborations, and levels of commercial professionalism that were built-up through a significant Procurement Reform programme that started in 2006. As a result of that programme, public procurement professionals already had contacts and relationships across all sectors and so were able to rely on one another to share intelligence, suppliers, stocks, and distribution.
78. Scotland was also able to rely on existing commercial capacity in government and the wider public sector to source additional stocks. Scotland did not, therefore, engage private sector commercial officers or buyers, and individuals in PPE buying roles were well-versed in public sector procurement legislation and policy, and had well-established connections with technical, medical, and social care end-users of PPE who advised at-pace on required technical standards for PPE. These established and staffed roles and functions meant that Scotland was able to mobilise a PPE sourcing response extremely quickly. Links within different parts of Scottish Government also further enabled a rapid response, with connections between procurement, enterprise policy, medical, and other policy teams supporting innovative responses such as standing-up domestic manufacture of facemasks and other PPE.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

Personal Data

Dated:

29 August 2024