

Witness Name: Karen Bailey

Statement No. 4

Exhibits: KB2/01-KB2/55

Dated: 12 February 2025

## UK COVID-19 INQUIRY

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### WITNESS STATEMENT OF

Mrs Karen Bailey, Chief Executive, Business Services Organisation

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#### **Introduction**

- 001 My name is Karen Bailey and I am providing this statement to the UK Covid-19 Inquiry in my capacity as Chief Executive of the Business Services Organisation. I will say as follows. I came into the post of Chief Executive in June 2020, initially on a temporary basis, then was subsequently appointed on a permanent basis. My statement covers the period from 1 January 2020 up to the 28 June 2022, however in order to provide context on some points I will refer to activities prior to 1 January 2020.
- 002 This statement is a supplement to my full statement to the Covid Inquiry on 'Module 5 – Procurement' and covers in greater detail matters relating to three organisations involved in the supply of, or offers to supply, PPE to Health and Social Care in Northern Ireland during the period from 1 January 2020 up to the 28 June 2022.

## NHS Wales Shared Services Partnership

003 In the early stages of the pandemic, BSO PaLS procured Type 2R facemasks from NHS Wales Shared Services Partnership ('NWSSP'). These products were subsequently withdrawn from use and this section of my supplementary statement provides greater detail on that purchase. On 9 April 2020 during a telephone call with Wales and Scotland, the Director of NHS Wales Procurement Services (Jonathan Irvine) informed Peter Wilson, Assistant Director – Procurement and Logistics at Business Services Organisation that NHS Wales had secured a significant volume of Type 2R facemasks and that they could make available a portion of this purchase to Northern Ireland and Scotland. Following confirmatory correspondence from NWSSP Director of Procurement, and subsequent consideration of the supply position in Northern Ireland, Peter Wilson, Assistant Director confirmed that Northern Ireland was interested in purchasing a share of the masks available. Confirmation of BSO's intent to purchase was communicated to NWSSP Director of Procurement by email on 12 April 2020 (with final volumes to be agreed). This was the date on which the contract was entered into and a formal purchase order was raised on 20 April 2020. NWSSP arranged delivery of masks direct to Northern Ireland through their contractor Bunzl Healthcare. BSO does not draw up a formal contract document for routine purchases such as this; rather we use the medium of a purchase order which makes reference to HSC Standard Terms and Conditions of Contract for that purpose with those confirmed as applicable through the delivery of the goods by the "supplier" on the key components of contract law of "offer and acceptance". As part of my evidence I have provided copies of the email exchanges which cover not only the commitment to purchase the Type 2R masks but also some of the wider discussion. I have provided two email chains at Exhibits KB2/01 [INQ000538650] and KB2/02 [INQ000538651]. The total volume of Type 2R masks procured was 5.97 million masks. There were two different prices to reflect the different Units of Issue - for [1&] units the cost was [I&S] equating to [I&S] per mask, and for [I&S] units the cost was [I&S] equating to [I&S] per mask.

004 Decision making regarding the purchase of goods for the BSO PaLS warehouse was, and is, delegated to officers within BSO PaLS and financial authority is delegated in accordance with an approved BSO Scheme of Delegated Authority (SODA). This SODA was amended in the first weeks of the pandemic to raise the authority level of the Assistant Director – Procurement and Logistics from £1m to £10m. The decision to purchase the masks from NWSSP was taken by Peter Wilson, Assistant Director - Procurement and Logistics who was acting within the boundaries of his authority. It was taken after an assurance from NHS Wales that the facemasks

in question had been considered and approved by the NWSSP's Surgical Medical Testing Laboratory (SMTL). I have provided email evidence relating to this at Exhibit KB2/03 [INQ000538652]. BSO PaLS is familiar with SMTL and their capabilities and has made use of their services in the past to assess whether products met the required standards. It was based on their "approval" of the products that the goods were deemed suitable.

005 BSO PaLS in terms of assurance of the product relied upon the expertise of SMTL; however following the emergence of problems with the masks BSO PaLS requested copies of the product standard certification reviewed by SMTL from NHS Wales Shared Services Partnership. NWSSP provided the due diligence information which is presented as evidence at Exhibits KB2/01 [INQ000538650], KB2/02 [INQ000538651] and KB2/03 [INQ000538652]. Please note that other information regarding due diligence activity or product review activity may be held by the Medicines Optimisation and Innovation Centre (MOIC) which is part of Northern Health and Social Care Trust.

006 As with all other purchase decisions at this time, when considering the volume of masks to purchase, BSO PaLS took into account the levels of stock available, the delivery position on Type 2R masks already on order and the emerging demand for PPE as the pandemic took hold. I have provided a copy of our "Surge Forecast v Demand Report" dated 12 April 2020 as Exhibit KB2/04 [INQ000538653]. This report shows that the demand for Type 2R masks exceeded the available supply at the time. Due Diligence paperwork is presented as evidence at Exhibits KB2/05 -KB2/18, as set out in the table out below:

KB2/05	INQ000538654	04 Jan 2019 Changzhou DSB Medical ISO Certificate of Registration
KB2/06	INQ000538655	17 Mar 2017 Changzhou DSB Medical Test Report Disposal Face Mask
KB2/07	INQ000538656	01 Mar 2020 Changzhou DSB Medical Declaration of Conformity
KB2/08	INQ000538657	09 Mar 2020 Changzhou DSB Medical Surgical Mask Type IIR Checklist/Conformity
KB2/09	INQ000538658	March 2020 Dishang Technical Data Sheet Medical Face Masks
KB2/10	INQ000538659	February 2016 EC Certificate Manufacturer Jiangsu Traumark

KB2/11	INQ000538660	January 2018 EC Certificate Manufacturer Jiangsu Traumark
KB2/12	INQ000538661	March 2020 EC Declaration of Conformity Weihai Dishang Medical Technology
KB2/13	INQ000538662	April 2020 Be Fit Lab Test Report
KB2/14	INQ000538663	April 2020 EC Declaration of Conformity Suzhou Dongshan Precision Manufacturing
KB2/15	INQ000538664	March 2020 Suzhou Test Report Disposal Face Mask
KB2/16	INQ000538665	March 2020 Jiangxi Qiaoming Test Reports Disposal Face Mask
KB2/17	INQ000538666	March 2020 Jiangxi Qiaoming EC Declaration of Conformity Disposal Face Mask
KB2/18	INQ000538667	18 Mar 2020 Jiangxi Qiaoming Medical Test Report Disposal Face Mask

007 In respect of the terms of the purchase of Type 2R facemasks BSO PaLS agreed with NWSSP, to our knowledge the goods were being offered to HSC at the price paid by NHS Wales; therefore, it was not possible or appropriate to negotiate a lower price as that would have resulted in a loss to NHS Wales. The price offered at that time was **I&S** per mask which was mid-range of similar product prices being offered to HSC – see Exhibit KB2/19 [INQ000538668] entitled Price Comparison NIAO Review (previously submitted to the Inquiry). Urgent supply was critical and first deliveries of the facemasks commenced on 28 April 2020 and completed on 11 May 2020. The terms and conditions which applied to the contract were HSC standard terms and conditions for the supply of goods as referred to on the purchase order which BSO PaLS placed for the supply of the products. In particular, payment was on HSC standard payment terms – 30 days from date of delivery or invoice whichever is the latter. BSO did not make any payment in advance and it is important to note that BSO considered this purchase to be between two public bodies. I have provided copies of contemporaneous notes of two meetings dated 17 April 2020 and 21 April 2020 which refer to the purchase of the Type 2R facemasks from NHS Wales Shared Service Partnerships at Exhibits KB2/20 [INQ000538669], KB2/21 [INQ000538670], KB2/22 [INQ000538671] and KB2/23 [INQ000538672].

008 In considering any risk associated with this purchase – given that this this was a purchase between two public bodies, the goods were being paid for on delivery, not in advance and the

products had been approved by NHS Wales SMTL service – BSO did not carry out a full risk assessment as this met the threshold for a low-risk purchase. BSO did not consider there to be any conflicts of interest associated with this purchase. BSO and BSO PaLS have a long-standing relationship with NHS Wales Shared Services Partnership which extends across joint collaborative procurement activity and shared information technology systems (in Family Practitioner Services).

009 A discussion on the purchase took place at the BSO PaLS wash-up meeting on the 15 April 2020 following confirmation from the Director of Procurement NWSSP that the masks had been confirmed as acceptable and had been ordered by NWSSP. Evidence is provided at Exhibit KB2/24 [INQ000538673], which is an email from the NWSSP Director of Procurement to Peter Wilson, Assistant Director – Procurement and Logistics confirming this. The BSO PaLS wash-up was regularly attended by the BSO Chief Executive during this period. During the Covid period the Assistant Director – Procurement and Logistics had an increased level of approval under the BSO Scheme of Delegated Authority to ensure that purchases of goods could be made without delay – that level was £10m and the purchase of masks from NHS Wales fell within the scope of his approval level.

010 As I have previously indicated, problems were experienced with the mask, and these issues emerged once the masks were deployed for use. Complaints were received from Trusts about the fit of the masks and they withdrew them from use; in particular, difficulties experienced in getting a snug fit around the wearer's nose and cheek were causing concerns for staff in using the mask. Infection Prevention Control (IPC) leads within the Trusts made the decision not to use the masks. Upon investigation by MOIC, it was found that the noseband was made of a plastic material which was not as malleable as other masks in use and that the masks may not be suitable for use in higher risk areas, but that they might be used in instances where MRI scanning was taking place as there was no metal content in the noseband. Subsequently members of the IPC cell reviewed the masks and rejected them for use in clinical areas. BSO PaLS contacted NHS Wales Shared Services Partnership to obtain copies of standards certificates and sought confirmation of the status of the masks deployed within NHS Wales. Certification was received and NHS Wales Shared Services Partnership confirmed that they had successfully deployed the masks and that they were in use successfully within NHS Wales. Despite this information, the decision remained to withdraw the masks within HSCNI.

011 IPC leads in the Trusts made the decision not to use the NHS Wales masks – this was due to a poor fit. Once the masks were declared unsuitable in HSCNI, they were withdrawn from general use. Subsequently BSO wrote-off any volume remaining within their warehouses and donated those products to charity. The charities which received the donated masks are SVP, Self Help Africa and Hope 365 in support of the war in Ukraine. As the masks had been successfully deployed within NHS Wales, BSO PaLS considered that it had no grounds to recover any monies and NHS Wales was unwilling to take the masks back as they had sufficient supply of masks at that point in time. It is our recollection that this discussion took place in a phone call on 27 May 2020, however we have been unable to identify that any contemporaneous note was made. I have provided evidence in the form of two email chains in this regard. The first email chain (last date 26 May 2020 at 18:21) is between the BSO PaLS Assistant Director and the NWSSP Director of Procurement and this chain indicates that the masks were not accepted by HSC organisations and his intention to discuss the return of the masks with the NWSSP Director in a scheduled phone call on 27 May 2020 [Exhibits KB2/24a [INQ000575087]]. The second chain (last date 27 May 2020 at 17:02) is a reply from the BSO PaLS Assistant Director and the BSO PaLS Head of Goods and Services Procurement, in which the Assistant Director indicates “No joy” in securing agreement from NWSSP to take back the masks rejected by HSC Trusts for use in NHS Wales where they had been accepted for use (Exhibit KB2/24b [INQ000575088]). This remark relates to an email in that chain dated 6 May 2020 at 10:18 informing the Assistant Director that NWSSP were pressing for payment.

### **Company E**

012 BSO PaLS entered into a contract with a company called [Company E] for the supply of Type 2R masks. BSO made a prepayment of 50% of the contract value totalling \$1,056,250.00 but the products supplied did not match the samples provided and approved under the HSC Product Review Protocol. The purchase order for the goods was raised on 7 May 2020; however, the actual date on which BSO indicated its intention to purchase was 30 April 2020. There was only one item procured against this contract/purchase order - Type 2R facemasks - and the volume to be supplied under the contract was [I&S] masks. The volume of masks ordered was considered in respect of the current stock and supply situation and predicted demand for the product as was BSO PaLS normal process. Had the goods delivered been acceptable for use then future volumes of goods purchased would have been adjusted to reflect the supply position at that future time. I have provided email evidence of the price, delivery and contract terms

offered as part of this purchase at Exhibits KB2/25 [INQ000538674] and KB2/26 [INQ000538675]. In this particular instance, BSO made a payment in advance as these were the terms offered by [Company E] and it was common during the early stages of the Covid Pandemic that advance payment of up to 100% of goods were being sought by suppliers.

013 The product offered to HSC by [Company E] was assessed in accordance with the HSC Product Review Protocol and considered fit for purpose. This was communicated to [Company E] and they were informed that “we will be ordering 2.5M from you”. Subsequently, a decision was taken not to proceed and when this was communicated to [Company E] they threatened legal action, arguing that BSO PaLS’ communication showed an intent to purchase and that BSO had entered into a contract. BSO PaLS then sought informal legal advice by telephone on or about the 6 May 2020 and it was considered that there was a risk of litigation against BSO over breach of contract given the wording of our email. Subsequently, on foot of this legal advice the Assistant Director – Procurement and Logistics, in discussion with senior officers in BSO PaLS and BSO, approved proceeding with the purchase. The problem with this contract emerged when [Company E] sought to deliver products which were not those approved under the Product Review Protocol, and BSO PaLS rejected the goods on the grounds that they were not the goods which were originally offered by [Company E] and approved by HSCNI. I have provided evidence which relates to assessment of the alternative offer from [Company E] – see Exhibits KB2/27 [INQ000538676], KB2/28 [INQ000538677], KB2/29 [INQ000538682], and KB2/30 [INQ000538683]. These include a report on the alternative product produced by MOIC. BSO PaLS requested repayment of the monies paid in advance to [Company E] and received correspondence from [I&S] agreeing to make the repayment, however this was not forthcoming. Subsequently BSO commenced proceedings to recover the 50% advance payment made to [Company E] for the goods.

014 [Company E] came to BSO PaLS’ attention on 27 March 2020 through the Department of Health following correspondence between a Northern Ireland General Practitioner (GP) and the Chief Medical Officer. In this correspondence the GP advised that her brother had contact with a businessman who could supply Covid Tests and other items required in the fight against Covid. The contact listed in the email previously provided at Exhibit KB2/27 [INQ000538676] was [I&S] [I&S] and [Company E] was subsequently identified as the company which would be supplying PPE to HSCNI. I have provided a copy of the contact emails in April 2020 as part of my evidence at Exhibits KB2/31 [INQ000538684], KB2/32 [INQ000538686] and KB2/33 [INQ000538690].

The facemasks were one of these other items. BSO PaLS was asked to investigate, and the Assistant Director - Procurement and Logistics made an initial contact and made efforts to obtain samples of the Tests for consideration by DoH and DHSC (as BSO PaLS were not involved in the selection or procurement of Covid Tests). Subsequent engagement with **Company E** regarding PPE products was channelled through the procedures developed in the Product Review Protocol – see the following exhibits in relation to same, set out in the table below:

KB2/34	INQ000538699	Sept 2018 Nelson Labs Compliance Documentation Ref 1088506-SO1
KB2/35	INQ000538700	Aug 2018 Nelson Labs Compliance Documentation Ref 1091505-SO1
KB2/36	INQ000538701	Sept 2018 Nelson Labs Compliance Documentation Ref 1093054-SO1
KB2/37	INQ000538702	May 2019 Nelson Labs Compliance Documentation Ref 1179649-SO1
KB2/38	INQ000538703	July 2018 Nelson Labs Compliance Documentation Ref BFE 0719
KB2/39	INQ000538704	March 2020 Zhejiang Lanhine Medical Products Compliance Documentation Ref CE
KB2/40	INQ000538705	Organisational Logos Ref InsertPic_82F9
KB2/41	INQ000538706	May 2024 Compliance Documentation Ref Government Documentation
KB2/42	INQ000538707	March 2020 Compliance Documentation Ref Surgical Mask
KB2/43	INQ000538708	November 2018 EC Compliance Documentation Ref Zhejiang Lanhine EC
KB2/44	INQ000538709	November 2018 Certificate Compliance Documentation Ref Zhejiang Lanhine ISO
KB2/45	INQ000538710	June 2021 Compliance Documentation Ref Medical Manufacturer Licence
KB2/46	INQ000538711	Sept 2018 Compliance Documentation Ref Government Documentation



015 In assessing the offer from [Company E] BSO PaLS applied the HSC Product Review Protocol which had been developed to support selecting products during the pandemic. [Company E] provided copies of standards certification which were reviewed by MOIC and product samples which were assessed by the Infection Prevention Control product assurance group and which were passed as acceptable. Subsequently a contract was entered into and a purchase order placed for those goods. However, the goods offered for delivery did not match those approved and subsequent assessment under the Protocol saw these alternative goods fail the technical assessment by MOIC. I have previously provided as evidence the documents submitted by [Company E] in respect of their initial product offer and their subsequent product offer and financials - see Exhibits KB2/47 [INQ000538712], KB2/48 [INQ000538736], and KB2/49 [INQ000538737]. Please note that other information regarding due diligence activity or product review activity may be held by the Medicines Optimisation and Innovation Centre (MOIC) which is part of Northern Health and Social Care Trust.

016 The purchase of facemasks from [Company E] was subject to the same scrutiny applied to any offer to supply goods requiring payment or part payment in advance. The product offered was assessed in accordance with the Product Review Protocol and was verified as meeting the required standards. A risk assessment of [Company E] was carried out as they were seeking a 50% payment in advance and the transaction was assessed to be "High Risk" with the following entry appearing in the - see "High Risk Contracts Awarded" at Exhibits KB2/50 [INQ000538740].

*"This supplier has no trading history with HSC with no means of recovering payment from on-going trade if necessary. The supplier is delivering a significant quantity of product which is in short supply. The product has been verified to have the required certificates of conformance."*

BSO PaLS also established that [Company E] had been set up in 2017 some years prior to the Covid-19 pandemic based on information provided by the company's partners.

017 In awarding this contract no conflicts of interest were identified. Decision making on the placement of contracts for the supply of PPE did not rest with one single person and was dependent upon a number of factors - for example technical assessment, quality assurance, end user acceptance, product suitability, compatibility and availability. Decisions to order goods taken by BSO PaLS were taken by staff at Band 7 and those staff are required to complete a

conflict of interest declaration each year (FRS8 Related Party Transaction Declaration). Had any conflict of interest arisen then any officer that had such a conflict would have been removed from the decision-making process if that conflict was of concern. A conflict of interest would be defined as an instance where an individual involved in the decision-making process, their relative or friend might be likely to benefit personally by the award of a contract to a particular supplier. In respect of **Company E** that company was treated no differently to any other in relation to conflicts of interest.

018 Turning to the problems with the masks that led to their rejection, BSO PaLS were advised by **Company E** that the Type 2R masks were available for delivery and were being held by their freight forwarder. BSO PaLS made arrangements with the freight forwarder to visit their premises in Belfast and at Belfast International Airport to confirm that the goods were present. Goods inspected at the freight forwarders warehouses did not match the goods previously approved. A sample was taken and reviewed by MOIC. The Technical Assessment previously provided as evidence KB2/26 [INQ000538675] provides a summary of the findings of MOIC in respect of the alternative product which was produced for BSO PaLS on 23 October 2020. Subsequently the goods were rejected as unacceptable before delivery could be made to BSO PaLS and BSO never took ownership of the goods.

019 When the goods were discovered to be not as represented and approved for supply, BSO PaLS rejected them and sought a return of the monies already paid. Correspondence was received from **I&S Company E** indicating that monies would be repaid, however no monies were forthcoming. When repayment of monies was not forthcoming BSO initiated legal proceedings in Hong Kong in an effort to recover the monies. The current position with the legal action is that default judgment was granted by the Court in favour of BSO on 14 January 2025 and an assessment of damages hearing is scheduled to take place on 17 February 2025.

BSO notified the PSNI with regard to possible fraud; PSNI initially took the view that this was a breach of contract and therefore a civil matter rather than a fraudulent action on the part of **Company E**. As BSO understands it the current position in respect of the PSNI at the date of writing is that following a further review they continue to hold view that this is a civil matter rather than a criminal one based on the information provided to them.

I have set out a timeline relating to the Civil Action in the table below:

26 November 2020	Letter before action
18 December 2020	Reply from I&S
4 January 2021	Email from I&S to I&S
18 January 2021	I&S to I&S
24 January 2021	I&S to I&S
17 May 2021	I&S to I&S
20 May 2022	Writ issued
29 June 2022	Application for leave to serve Writ outside jurisdiction filed
5 July 2022	Order granting leave to serve outside jurisdiction, but Order didn't limit a time within which the defendant to be served must enter an appearance. Was not able to be rectified before 1 year validity of Writ expired.
20 June 2023	Second Writ issued
24 August 2023	Order granting leave to serve proceedings outside the jurisdiction
9 November 2023	Writ, Notice of Writ and Order of 24 August 2024 served on Company E's registered address in Hong Kong by Eversheds Sutherland
23 May 2024	Application to mark judgment filed with High Court
13 June 2024	Application returned stating leave required as Defendant outside the jurisdiction
1 July 2024	DLS write to High Court explaining leave not required as leave was previously granted on 24 August 2023. Application re-filed.
18 November 2024	No response to our previous letter, so re-sent to High Court
13 December 2024	Application to mark judgment listed for attendance
14 January 2025	Default judgment granted in favour of BSO
17 February 2025	Assessment of damages hearing scheduled to take place

**Company D**

020 In April 2020, BSO PaLS rejected an offer to source FFP3 masks from a company called **Company D** and this part of my supplementary statement deals with BSO PaLS interaction with this company in respect of FFP3 masks. BSO PaLS received a direct email contact from **Company D** on 3 April 2020 and this was entered into the BSO PaLS Contact Exploration Log. The contact offered a range of PPE products including masks (Type 2R and FFP3), gloves, gowns and non-PPE scrubs. An entry was also made into the BSO PaLS FFP3 Mask Status of Leads Log. **Company D** also applied to join the BSO PaLS Dynamic Purchasing System for PPE which was set up under the Public Contracts Regulations 2015 in July 2020 to support purchase of PPE.

021 BSO PaLS, in accordance with procedures established to handle offers of goods during the pandemic, sought evidence from **Company D** that the masks offered met the standards applicable to those products. The information provided failed the technical assessment process and

subsequently their offer for FFP3 masks was rejected. I have provided evidence of the information submitted by [Company D] in respect of the masks at Exhibits KB2/51 [INQ000538741], KB2/52 [INQ000538743], and KB2/53 [INQ000538751]. Please note that other information regarding due diligence activity or product review activity may be held by the Medicines Optimisation and Innovation Centre (MOIC) which is part of Northern Health and Social Care Trust. The FFP3 masks did not proceed beyond the stage of validating standards certificates for the products. No order was placed with [Company D] for FFP3 masks for supply from BSO's warehouses.

022 Subsequent to the offer failing the technical assessment, and following an exchange of emails regarding certification, on 16 April 2020 BSO PaLS emailed [Company D] advising them that the offer they had made in respect of FFP3/FFP2 masks would not be accepted as the CE certificate provided in respect of the masks could not be found via the issuing body's website and could therefore not be validated as per exchange of emails exhibited at KB2/51 [INQ000538741], KB2/52 [INQ000538743], KB2/53 [INQ000538751], KB2/54 [INQ000538756], and KB2/55 [INQ000538761].

023 I understand that it has since emerged that other HSCNI organisations had problems with products supplied by [Company D] however, neither BSO nor BSO PaLS placed an order with [Company D] for FFP3 masks and subsequently have had no communication with the PSNI regarding orders placed by us. BSO did receive communication from the PSNI regarding orders placed by other organisations and following that communication BSO PaLS shared information relating to our engagement with [Company D] including reasons why their product offering was rejected.

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

[Redacted Signature] **Personal Data**

Dated

12 February 2025