

## UK COVID-19 INQUIRY

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### MODULE 5 (PROCUREMENT) CLOSING SUBMISSIONS OF THE DEPARTMENT FOR BUSINESS AND TRADE

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#### INTRODUCTION

1. The Department for Business and Trade was established on 7 February 2023, after the period under examination by the Inquiry. It was granted Core Participant status in Module 5 as the successor department for both the former Department for International Trade (DIT) and the former Department for Business, Energy and Industrial Strategy (BEIS).
2. The Department provided two corporate witness statements: from Andrew Mitchell on behalf of former DIT [INQ000527714]<sup>1</sup>, and from Sarah Munby on behalf of former BEIS [INQ000517443]. The Department's approach in both statements was to offer a very detailed account in order to answer the Inquiry's Rule 9 witness statement request as fully as possible. Critical reflections and sections on the lessons learned were volunteered by the corporate witnesses in both statements, see:
  - (i) DIT corporate statement (Andrew Mitchell) [INQ000527714], Section 16;
  - (ii) BEIS corporate statement (Sarah Munby) [INQ000517443], Sections 10 & 14.
3. These deliberately brief closing submissions do not seek to repeat those matters, nor the wider detail set out in both the corporate witness statements as supplemented by individual statements and evidence from DIT<sup>2</sup> and BEIS<sup>3</sup> witnesses. Rather these submissions focus on several discrete topics that were explored in the oral evidence of

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<sup>1</sup> See also Mr Mitchell's personal witness statement [INQ000533244].

<sup>2</sup> **Personal witness statements from DIT Ministers:** The Rt Hon Liz Truss (former Secretary of State for International Trade, July 2019 – Sept 2021) [INQ000560896]; The Rt Hon Graham Stuart (former Parliamentary Under-Secretary of State for Exports, Jan 2018 – Sept 2021) [INQ000536344].

**Personal witness statements from DIT officials:** Dame Antonia Romeo (former Permanent Secretary, Mar 2017 - Jan 2021) [INQ000536358]; The Grade 7 Team Leader, China Donations Team [INQ000527713].

<sup>3</sup> **Personal witness statements from BEIS Ministers:** The Rt Hon Lord Alok Sharma (former Secretary of State for BEIS, Feb 2020 – Jan 2021) [INQ000535016]; The Rt Hon Greg Clark (former Secretary of State for BEIS, July 2016 - July 2019) [INQ000536349]; The Rt Hon Kwasi Kwarteng (Former Minister of State (July 2019 – Jan 2021) and Secretary of State (Jan 2021 - Sept 2022)) [INQ000536159].

**Personal witness statements from BEIS officials:** Tim Jarvis (re PPE Make) (Statement [INQ000527570] and oral evidence (Transcript Jarvis/7/1- 39)); Graham Russell (re OPSS) (Statement INQ000562460] and oral evidence (Transcript Russell/7/40 – 97)).

the witness for DIT (Andrew Mitchell) and one of the witnesses for BEIS, Graham Russell.

## **FORMER DEPARTMENT FOR INTERNATIONAL TRADE**

### *The early difficulties experienced by the Joint Assistance Coordination Team*

4. The Joint Assistance Coordination Team (JACT) was set up by DIT and FCO as part of the emergency response to source leads in overseas markets for new suppliers of medical equipment. Initially the focus was on ventilators, and soon after PPE.
5. Counsel to the Inquiry understandably asked Mr Mitchell about the difficulties encountered by the JACT in the early weeks of its formation. In both his oral evidence and his corporate and personal witness statements, Mr Mitchell was frank in accepting these difficulties. The difficulties included:
  - (i) Complexity within the JACT's design (initially it had three teams under joint leadership);
  - (ii) A degree of understandable pressure in which the feeling in JACT was that there was not a clear or prompt enough demand signal from DHSC or decision on leads put forward, and DHSC being concerned that leads generated by the JACT were not of sufficient quality, lacking sufficient early checks;
  - (iii) A delay in ensuring that DIT commercial expertise was brought directly into the JACT team.
6. The Department for Business and Trade would emphasise three factors on the difficulties encountered by the JACT.
7. First, the email exchanges which evidenced these difficulties were, as Mr Mitchell explained, "...an accurate picture ... of a moment in time". They were early difficulties encountered that were then rapidly, and appropriately recognised and dealt with by way of the creation of the Global Strategic and Sourcing Engagement Project (GSSEP), which was established on 27 April 2020. This is not raised to minimise the difficulties encountered, nor to suggest that it does not raise a valid issue about preparedness (as to which see below). However, the Chair will be very familiar, in assessing frank exchanges of emails between teams and departments, with the need to judge these in the context of the pressures under which those teams were working. The JACT team in London, like so many others responding to the pandemic, were working (literally) a 24-

hour day, in shifts, to ensure that lead opportunities in the international markets in any time zone within the World, could be taken forwards promptly. It is important to note, also, that the JACT team were not carrying out the normal, business as usual functions of the DIT. In the context of medical equipment, DIT's usual role was in pursuing inward investment into the UK, supporting UK firms looking to export such equipment, and addressing such equipment within trade agreements. In the formation of the JACT, the existing and transferable skills and experience of DIT and FCO staff (including DIT's Healthcare, Life Sciences and Bioeconomy team) were brought together at pace to help address the critical threats to key supply chains. Seen in this context, that there were early pressures and confusion over roles and processes is not surprising.

8. Second, and linked to this, it would be harsh to conclude that the emergency formation of the JACT of itself evidences a DIT-specific failure of preparedness. It does speak to the wider cross-government failures in pandemic preparedness which the Inquiry has investigated and reported upon in Module 1. However, as above, the JACT was not performing a standard part of DIT business for which it had a standing pandemic/wider emergency function for which it had not prepared. Instead, pre-pandemic, the responsibility for key supply chains (including the analysis of their vulnerabilities and mitigation) rested with each relevant lead Department.
9. Third, key lessons have been learned. It is not economic to have a team such as the GSSEP on standby in case of a whole systems emergency. However, in addition to the wider work on supply chain vulnerabilities (as to which see below), the learning and improvements from the GSSEP were captured in the GSSEP Playbook [INQ000507427]. As Mr Mitchell has explained, this provides a high-level operational blueprint should DBT need to rapidly mobilise a similar international sourcing capability in the future.

*The pre-pandemic lack of a centrally coordinated process for assessing supply chain vulnerabilities and mitigations*

10. Project Defend was borne out of a commission from the Prime Minister, on 25 April 2020, "... to interrogate where the vulnerabilities lie in our critical goods/supply chains and look at a full and rigorous set of options for addressing those vulnerabilities, from radically rethinking our approach to procurement across the globe to working out where we need to build rapidly domestic capacity" [INQ000489616\_0001]. The project ran alongside the immediate pandemic response. DIT was the central coordinating point for the project, and it was ultimately overseen by the First Secretary of State, the Rt Hon Dominic Raab.

Project Defend produced analysis of a wide range of supply chains, their vulnerabilities and potential mitigations. Responsibility for the supply chains, including for implementation, remained with the relevant lead government department. By the end of the fourth and final phase of Project Defend, the function of a centralised analysis of supply chain vulnerabilities across Government was incorporated into a standing Directorate. Initially this was DIT's Global Supply Chain Directorate. It is currently the Economic Security and Supply Chain Resilience Directorate within DBT.

11. Counsel to the Inquiry questioned Mr Mitchell about the lack of this centralised function prior to the pandemic. Both in his oral evidence<sup>4</sup> and his earlier corporate statement, Mr Mitchell was frank in the acceptance that there had been no such centrally coordinated function before the pandemic. In DIT's corporate statement, one of the central concluding reflections was the contribution that Project Defend made, but a candid acceptance of the corollary implication that the absence of such a function was a weakness in the UK's pandemic preparedness:

*"16.53 ... Project DEFEND made a material contribution to supply chain resilience during the pandemic, working with OGDs to scrutinise supply chain vulnerabilities and enabling appropriate action to be taken. It worked to anticipate and protect against supply chain failures. This in turn led to the development, within HMG, of a permanent supply chain function in the form of what is now the ESSCR Directorate. This has helped to ensure that we are prepared and better able to mitigate these risks in the future. ... However, the absence of a standing supply chain resilience function, centrally coordinated on behalf of Government, was a further weakness at the outset of the crisis, leading to a lack of centralised or focussed oversight of supply chain resilience across all the UK's critical supply chains. This was a lesson learned by many partner governments."* [INQ000527714\_0185].

12. Counsel to the Inquiry was therefore right, we submit, to alight on the lack of centralised function for assessing supply chain vulnerability as being another shortcoming at cross-governmental level in the UK's pandemic preparedness. However, insofar as Counsel to the Inquiry's questioning may have implied that there was any failure by, specifically, DIT to have taken up that role pre-pandemic<sup>5</sup>, such a criticism would not be justified. Pre-pandemic DIT did not have, nor was it expected to have, the coordinating role that it later assumed in Project Defend. The weakness pre-pandemic was in a system that –

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<sup>4</sup> Transcript Mitchell/5/43/16 – 5/44/14

<sup>5</sup> See the line of question at: Transcript Mitchell/5/43/21–22) and Transcript Mitchell/5/44/6 – 9.

as set out in DIT's corporate statement, left several government departments to hold the 'lead' role for the supply chains in their sector when planning for, responding to, and recovering from emergencies<sup>6</sup>. The result was that supply chain resilience was not a policy area owned by any one central department, and individual departments developed strategies relevant to their own areas of expertise<sup>7</sup>. While it is true both that DIT held expertise that could be applied to this function<sup>8</sup>, and that DBT now hosts the responsible Directorate<sup>9</sup>, neither of those matters would justify a conclusion that DIT ought unilaterally to have pursued this function pre-pandemic. DIT co-ordinated this work in Project Defend, in accordance with the initial request and commission from No.10, but the output was dependent upon contributions both from many government departments and from external consultants. Plainly, however, at a government-wide level, it would have been highly desirable for the need for this centralised function to have been recognised sooner.

13. Counsel to the Inquiry questioned Mr Mitchell about the UK's Critical Imports and Supply Chains Strategy [INQ000494249] and Professor Manners-Bell's observations on that strategy.<sup>10</sup> The strategy is the Government's high-level national strategy which provides an overview across all critical imports. Prof. Manners-Bell is therefore not perhaps realistic in expecting this high-level national strategy to descend into granular detail on PPE, as may be inferred from his criticism that the strategy makes only "*cursory mention*" of the PPE sector and medical equipment. He suggests that specific reference to China is absent, when in fact the Strategy plainly demonstrates the significance of China ([INQ000494249-0008] to [INQ000494249-0009]: the internal pages 8 and 9, and figures 1 and 2). Mr Mitchell was therefore justified when he:
- (i) observed that (while he no longer works in this area), the Strategy was broadly what he would expect in a strategy for supply chain resilience for the national economy rather than a sector-specific supply chain strategy<sup>11</sup>;
  - (ii) observed that the significance of China as a market is recognised in the Strategy<sup>12</sup>; and
  - (iii) agreed with Counsel to the Inquiry's suggestion that the more granular detail on diversification of supply in PPE/medical equipment, support for domestic

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<sup>6</sup> [INQ000527714\_0103] §§10.1-10.3.

<sup>7</sup> [INQ000527714\_0015] §§2.15 – 2.16 and [INQ000527714\_0185] §16.53.

<sup>8</sup> Transcript Mitchell/5/44/6-14.

<sup>9</sup> [INQ000527714\_0134] Section 12.

<sup>10</sup> Transcript Mitchell/5/68/6 - 5/71/17.

<sup>11</sup> Transcript Mitchell/5/70/9-18.

<sup>12</sup> Transcript Mitchell/5/70/24-5/71/2.

manufacturing, and investment in supply chain technology are matters to be taken up with DHSC rather than in the UK Government-wide strategy<sup>13</sup>.

#### **FORMER DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY**

14. Graham Russell, Chief Executive Officer of the Office for Product Safety Standards (OPSS) since its creation in 2018 gave evidence about the regulatory landscape which had to be navigated by those companies in the UK who began to manufacture of PPE in response to the pandemic.<sup>14</sup>
15. Mr Russell's role during the pandemic was to ensure that the UK's regulatory system remained flexible and responsive to the evolving challenges of public health and consumer protection. This involved overseeing the safety and regulatory aspects of PPE and other Covid related products, responding to emerging risks, supporting the UK's shift to online commerce and advising government policy on product safety.<sup>15</sup>
16. OPSS worked closely with the Health and Safety Executive (HSE) and other government departments to advise Ministers on possible regulatory easements whilst ensuring the product safety was not compromised within the context of the pandemic. Once the regulatory easements were approved, the OPSS worked with other market surveillance regulators, including the HSE, to implement them and then produce detailed guidance on producing PPE for Covid-19 under the new regulatory easements.<sup>16</sup>

#### *Complexity of the regulatory landscape*

17. Mr Russell was asked questions about the nature of the regulatory landscape comprising three separate regulators for different relevant products depending upon their uses (the HSE, MHRA and OPSS). It was suggested that responsibility for regulating PPE in healthcare settings was fragmented and complex.<sup>17</sup>
18. Whilst accepting there was a degree of complexity and fragmentation, Mr Russell expressed the view that this was and is, essentially, inevitable in the manufacture of PPE

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<sup>13</sup> Transcript Mitchell/5/71/6-17.

<sup>14</sup> Graham Russell (re OPSS) (Statement [INQ000562460]) and oral evidence (Transcript Russell/7/40–97).

<sup>15</sup> [INQ000562460\_0004] §2.2.

<sup>16</sup> [INQ000562460\_0005] §3.3. For further details of OPSS' role see §§7.5 and 7.6 of the BEIS corporate witness statement [INQ000517443\_0020].

<sup>17</sup> Transcript Russell/7/62/17- 7/64/6.

because of the wide variety of products and diverse uses to which they are put. He did not think this was a significant problem but thought that the most important thing was to have good protocols, good coordination and good use of data so that “*the regulators can act as one*”. In Mr Russell’s view, having a lead regulator or only one regulator would not obviate the need for coordination it would merely re-position those conversations and would not be the most flexible solution (to deal with the next healthcare emergency).<sup>18</sup> The Chair is therefore invited to view with caution any suggestion that a recommendation that having a single or a lead regulator for PPE in a healthcare setting would address the challenges faced in its regulation and ensuring the timely and efficient provision of safe products in an emergency.

19. In response to questions from the Chair relating to the complexity of a number of regulators involved with dual use products, Mr Russell expressed the view that fragmentation could not be avoided, and it was a matter of how to manage it so that there was clarity. In ‘peacetime’, an existing Conformity Assessment Body could deal with all requirements for both uses in one process and so in practice there was no issue. In a crisis, his recommendation for what was needed was co-ordinated activity by regulators on establishing and operating derogations and easements so there is clarity in how the product can be approved before being placed on the market or approved for use in healthcare settings.<sup>19</sup>

## CONCLUDING REMARKS

20. The significant challenges that the pandemic presented to PPE procurement were unprecedented in peacetime. Responding to these challenges necessitated a huge effort on the part of staff members from multiple government departments to support the NHS. DBT is grateful for the opportunity to have contributed evidence to this module and remains eager to learn lessons that will enable an effective response to any future such emergency.

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<sup>18</sup> Transcript Russell/7/82/13 ff in particular at 7/84/12 – 7/86/11.

<sup>19</sup> Transcript Russell/7/64/7 – 7/66/17.

21. DBT hopes that these brief observations are of assistance to the Inquiry in preparing its report including recommendations for the future and remains willing to assist further should the Inquiry require it.

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