IN THE UK COVID-19 PUBLIC INQUIRY

BEFORE BARONESS HEATHER HALLETT

AND IN THE MATTER OF:

MODULE 5 OF THE INQUIRY (PROCUREMENT)

CLOSING SUBMISSIONS ON BEHALF OF
NHS WALES SHARED SERVICES PARTNERSHIP (NWSSP)

History, constitution and functions of NWSSP

1. NWSSP was created in 2011, and its Procurement Services division therefore an established provider of procurement services at the outset of the pandemic. Within NWSSP there was considerable professional experience in the field of procurement. Alan Brace, Director of Finance of the Health and Social Services Group in Welsh Government (WG), and as such an important part of the strong relationship between NWSSP and WG during the pandemic, stated [6/194/8-14] that:

"we were really fortunate in Wales to have some really experienced procurement professionals sitting within an organisation that had central responsibility for buying, storing, distributing, and fairly sort of joined up establishment relationships, and I think that they were critical, particularly in that early phase of the pandemic."

2. NWSSP is *"an integral part of the NHS in Wales"*: [Jonathan Irvine/14/96/13-14]. The organisation is hosted by Velindre University NHS Trust. The Shared Services Committee, through which it discharges its functions, is required by regulation to have on its membership a representative of each Health Board, Trust and Special Health Authority in Wales. It receives its funding either from individual Health Boards, Trusts or Special Health Authorities who require specific services, or directly from WG. Its lines of accountability are through the Managing Director of NWSSP, to the Shared Services Committee and to the NHS Chief Executive in Wales, and, in respect of some of its functions, directly to WG. NWSSP has always delivered a financial break even position, so that at financial year end any surplus on operating costs are distributed back to the Health Boards, Trusts and Special Health Authorities.

3. There is an expectation that all procurement activity within the NHS in Wales is undertaken through NWSSP's Procurement Services division: [Jonathan Irvine/14/101/1]. This exclusive central arrangement contrasts with the situation in England prior to the pandemic where a significant proportion of procurement activity was undertaken by individual NHS Trusts, and correspondingly less within and by the central, national body of the NHS Supply Chain.

4. As an organisation hosted by an NHS Trust NWSSP differs from the bodies discharging similar procurement functions in the other devolved administrations: National Services Scotland (NSS) is itself a national Health Board within Scotland and the Business Services Organisation, Procurement and Logistics Services (BSO PaLS) is an *"arm's-length body of the Department of Health"* in Northern Ireland: [Karen Bailey/15/2/24-25]. Nor was the remit of these organisations identical prior to the pandemic, with for example BSO PaLS having an existing responsibility for procurement in the social care sector. It was, however, a common feature of these organisations that within them there was a concentration of professional experience in procurement, and that they were acting centrally on behalf each nation. The evidence before the Inquiry was that each was able to respond well to the significantly increased demands placed upon them, at short notice, at the beginning of the pandemic.

Widening of NWSSP's responsibilities during the pandemic

5. Prior to the pandemic NWSSP was responsible for BAU (business as usual) procurement, mainly for secondary healthcare providers within the NHS with a small level of activity on behalf of GP contractors. WG, and not NWSSP, was responsible for procurement of items in the PIPP stockpile, but NWSSP was responsible for the storage of those items, and their distribution when necessary and as directed by WG. NWSSP was responsible for the monitoring of the stockpile, but decisions on what to do with, and in response to, items noted to be out of date were a matter for WG [Jonathan Irvine/14/109/10-14].

6. The PIPP stockpile included a quantity of FFP3 masks whose expiry dates had been extended on two occasions following re-testing, and which had been relabelled with the new dates. On the third occasion on which the dates expired re-testing was again undertaken and the dates extended, but there was insufficient time to relabel each of the masks, which is a labour-intensive process. Instead, a FAQ leaflet was placed in each box containing these masks, explaining the additional testing that had been

undertaken and confirming that the masks remained fit for use although the expiry date on the label had been exceeded.

7. In the very early stages of the pandemic there was an expectation in Wales that the requirement for PPE would be sufficiently met from a central UK government allocation; this rapidly proved not to be the case, and by about 20 March 2020 NWSSP had assumed responsibility for procurement of PPE.

8. On 19 March 2020 NWSSP was directed by WG to assume responsibility for the procurement of PPE for the social care sector in Wales. NWSSP also assumed responsibility, early in the pandemic, for the procurement of PPE for primary healthcare contractors, including GPs, dentists, pharmacists and opticians. In so far as there is an issue over the timing of the request to NWSSP to expand the scope of its operations so as to cover social care, Andrew Slade on behalf of WG stated [14/90/3-7] that:

"I think that we have already said, as a government, that in a future pandemic, we would immediately move to involving provision for care settings into the work of the Shared Services Partnership"

NWSSP's response to its increased role

9. NWSSP showed itself to be capable of adapting to the increased demands placed upon it during the pandemic. It modified and added to existing systems, and adopted a single, unified system for the triage and assessment of the large number of offers to supply PPE made to it after the First Minister's "industry call to arms". It made use of existing resources where possible, but was prepared to buy in additional services from the private sector where necessary to support additional warehousing and distribution capacity. In discharging its increased responsibilities it received substantial financial and other support from WG.

10. All offers to supply PPE had to be made via a single email address. There was no VIP, or High Priority, Lane. There was a Critical Items List identifying items which were critically required by the NHS in Wales, but the prioritisation of certain *products* in circumstances of pressing need is not to be confused with prioritisation of *suppliers*, of which there was none. The Life Sciences Hub was enlisted to assist with preliminary triage, described by Jonathan Irvine [14/121/1] as *"front door work"*. The onus was placed on the offeror to demonstrate that it could supply products which complied with all technical and regulatory requirements, and if requested documentation was not

supplied within a short time frame (3 days) the offer was not pursued further: this requirement was justified by the circumstances of the early pandemic when demand, and the state of the market, was changing by the day if not by the hour.

11. NWSSP had a particular pre-existing asset in the Surgical Materials Testing Laboratory (SMTL), a separate division within NWSSP, which had the expertise not only to check that all technical and regulatory requirements had been complied with, but also where required to carry out (prospective) testing on the product itself.

12. A balance needed to be struck between speed of processing of offers and ensuring that the product offered was fit for purpose and represented value for money in what, at least at the outset, was a sellers' market. NWSSP streamlined its own procedures for obtaining financial approval by increasing the threshold contract value above which approval was needed from the Velindre University NHS Trust Board from £1m first to £2m and then to £5m; external WG approval continued to be required for contracts whose value was in excess of £1m. At the same time a new Financial Governance Group (FGG) was established consisting of senior representatives of NWSSP, Velindre University NHS Trust Board and the Head of NHS Counter Fraud services in Wales, with the stated aim of monitoring procurement expenditure related to the pandemic and assisting the contract decision-maker; the focus of the FGG was on higher value contracts and those potentially carrying a higher risk. Where it was involved in scrutinising an offer the FGG was supplied with a report by the SMTL. In the case of at least some high value contracts escrow accounts were used to facilitate the making of stage payments and thereby minimise financial risk.

13. The Auditor General for Wales in his report of *Procuring and Supplying PPE for the Covid-19 Pandemic* (April 2021)[INQ000214235_0004] found that there were cases in which NWSSP had failed to issue a contract award notice within 30 days of the contract being let. NWSSP accepts the importance of transparency in the award of contracts and regrets these omissions, which occurred as a result of oversight at a time of extreme pressure of work. NWSSP carried out a review of all contracts awarded during the relevant period and where necessary retrospective notices were published: para 227 of Jonathan Irvine's first statement [INQ000536425_0057]. The Auditor General's adverse finding in respect of contract award notices however stands out as the sole substantial criticism of NWSSP in a report which was otherwise positive about its work. In his Key Findings at paras 10 and 11 [_0005-0006], the Auditor General stated:

"Overall, Shared Services developed good arrangements to rapidly buy PPE, while balancing the urgent need to get supplies for frontline staff with the need to manage significant financial governance risks in an area of rapidly growing expenditure. These risks included dealing with new suppliers, having to make advance payments and significant quantities of fraudulent and poor quality equipment being offered.

Time pressure meant due diligence could not always be carried out to the level it would outside the pandemic in a normal competitive tendering process. But, for each contract we reviewed, we found evidence of key due diligence checks. And while costs were generally higher than before the pandemic, we saw evidence of Shared Services negotiating prices down."
(author's emphasis)

14. There is therefore no evidence of any substantive failure in the evaluation of offers and the selection of contractors. It is also a measure of the efficiency of the process that there was little waste. In the 2 years to April 2022 NWSSP wrote off or wrote down just £12m of PPE stock, or about 3% of the total, due to revaluation or expiry of shelf life, and of this just £2m related to stock whose shelf life had expired: [Jonathan Irvine/14/136/14].

15. NWSSP was able to make use of PPE held in its Newport warehousing facility as part of the stockpile put in place to address risks associated with the UK's exit from the EU. That facility itself provided *"an enormous space in which to bring in larger volumes of products centrally for Wales"* [Jonathan Irvine/14/116/8-9] from which products could be distributed either to regional warehouses in the north and south of Wales or directly to the health or social care sectors.

16. NWSSP increased its own storage capacity and the size of its fleet to assist with distribution, but it was necessary to seek assistance from the private sector to assist with both storage and distribution: see paras 144-146 of Jonathan Irvine's first witness statement [INQ000536425_0035]. Jonathan Irvine described the assistance provided by these contractors, with whom NWSSP had experience of working closely prior to the pandemic, as *"excellent"* and *"invaluable"* [14/118/13 and 18].

CERET (Critical Equipment Requirement Engineering Team)

17. At para 127 of his first witness statement [INQ000536425_0031] Jonathan Irvine stated that he had not observed any noticeable impact on the availability of PPE in Wales as the result of the work of CERET and the allocation of grants to manufacturers

in order for them to repurpose to the manufacture of PPE. In the course of preparation of his second witness statement [INQ000575089_0019] he was asked to consider a contract awarded to British Rototherm Co Ltd for the supply of face visors, and he recognised the Welsh operating base of that company and their engagement with CERET. In oral evidence at [14/128] Mr Irvine recognised the contribution of CERET to the production of hand sanitiser in Wales through the repurposing of an existing manufacturing facility, while making the point that hand sanitiser does not fall within the definition of PPE for the purposes of this Module and he had not therefore referred to this contribution in his witness statements.

18. In making the statement that he did at para 127 of his first witness statement Mr Irvine did not intend any disrespect for the work of CERET. It is not NWSSP's position that the work of CERET was without value, or that a similar organisation might not be of benefit in a future pandemic. Richard Davis, lead government official within CERET, himself agreed that it was *"very hard"* or *"almost impossible"* to quantify or trace back how much of the credit for Wales not running out of equipment was due to the work of CERET [14/170/4-7]. NWSSP does say that CERET was concerned with the development of manufacturing capacity in Wales, and there was little or no time for that development in the early stages of the pandemic; product was required at speed from those with an existing capacity to supply it.

The social care sector

19. At the start of the pandemic, arrangements for procurement in social care in Wales were markedly different from those within the NHS. Whereas, as noted above, procurement in healthcare was centralised, procurement in social care was undertaken at a local level by each of the 22 local authorities and by private sector providers, and accordingly procurement expertise was more thinly spread and fragmented.

20. There is no evidence that NWSSP did not engage as fully as possible in its extended role in the procurement of PPE for social care. As Alan Brace said at [6/187/24-25]. *"(a)ll of us just really focused on dealing with health and social care as one and the same thing"*. Mr Brace was asked about the service level agreement for the provision of PPE to the social care sector, which was not signed until October 2020. He said [6/185/23-186/2] that *"there was a slight delay around the formal service level agreement, but that was just more of an administrative issue rather than anything to do with any delay in shared service trying to cover all of social care"*. Later [6/187/1-3] he said that:

"The thing that really sort of probably held it up was more in the modelling and the data. I think local authorities took quite a while to have an agreed methodology across 22 local authorities that could feed into a service level agreement that would form a more formal basis of the type of volumes that were both needed and also required to be sourced."

21. By 7 May 2020 about two-thirds of the social care sector's needs were being met by NWSSP. In part that was because parts of the sector were still making their own arrangements to procure PPE directly from suppliers as they had done prior to the pandemic. Alan Brace said [6/184/17-19] that *"even after that date* [7 May 2020] *there were still ongoing procurement buy-in by parts of the social care system in Wales."* Mr Brace further stated [6/186/7-11] that:

"I think we felt a lot more confident and assured around the NHS by the end of April/ beginning of May. I think we probably felt a little bit more confident and assured for social care through sort of June and July"

and at [6/187/1-3] he went on to say that though the summer of 2020 those within the social care sector who needed a supply of PPE from NWSSP were receiving it.

Distribution of PPE

22. At no time did Wales run out of PPE stock at a national level, as confirmed by the Auditor General for Wales [INQ000214235_0004]. It is accepted however that there is substantial evidence of reports by frontline staff of shortages of PPE, or of a particular type of PPE.

23. NWSSP's responsibility was to deliver PPE of the types prescribed by the UK IPC Cell and/or WG to the central receipt and distribution point of each hospital, or to the Joint Equipment Stores (JES) of each local authority. Onward distribution to the end user was the responsibility of the individual Health Board, Trust or local authority.

24. Alan Brace identified it as one of his two main challenges when taking up his role in PPE procurement – the other being whether the UK government could replenish stock – that there was a disconnect between what NWSSP considered had been distributed to NHS sites and what the NHS believed that they had [6/189]. The military were asked to investigate. In a report dated 2 April 2020 [INQ000299126] the Military Assessment Team (MAT) found that:

"National and regional storage and distribution capacity remains fit for purpose, but there is a perception among "frontline" staff both within the NHS and social care sector that there are shortages of PPE. In part this is due to a lack of clear guidance on correct PPE usage and a lack of a shared common logistics picture of what stock is in forward locations"

Alan Brace summarised the conclusions of this report as confirming that *"there was enough stock out there…but because…they were pushing the product out, there clearly was coordination issues at the hospital end about what stock was held where, and how to sort of distribute that as quickly as possible across the various sites and hospitals [sic] within the hospital"* [6/189/22-190/4].

25. As the above extract from the MAT report indicates, the disconnect between the experience of frontline staff on the one hand and on the other NWSSP's position that it was at all times complying with what was asked of it in terms of distribution was felt within both the health and social care sectors. Alan Brace gave evidence [6/201] of a call to WG in late April 2020 that a care home had run out of PPE. NWSSP were contacted and stated that the local JES had been replenished. A site visit confirmed that the JES was complete with stock, but there were *"clearly communication or distribution issues just between that care home, the local authority, and the joint equipment store"* [6/201/18-21].

26. There is no evidence of any failure of distribution on the part of NWSSP.

The assessment of demand

27. NWSSP released and distributed PPE within the PIPP stockpile on the instruction of WG. The distribution was on a push basis, having regard to normal levels of demand and, in the case of local authorities, the size and population of the local area.

28. Ongoing and accurate assessment of levels of demand proved challenging, in particular because of an ongoing lack of reliable and accurate information as to what stock was being held locally. Deloitte were instructed under an arrangement initiated and funded by WG. *"Deloitte's modelling didn't provide details of what was physically and actually being held locally and in joint equipment stores, but it provided a forward look into what would likely be required by those areas"* [Jonathan Irvine/14/134/19-23].

29. Reports were provided by the military dated 11 May 2020 [INQ500182] and 4 June 2020 [INQ000506700]. The first of these concluded that NWSSP had maintained regular stock inflow, but that there was a lack of confidence, and a perception among frontline staff in the health and social care sectors of a shortage of PPE, which had led to stock hoarding in parts of the system and over demand. Difficulties in assessing demand were compounded by evolving advice from the IPC Cell as to the nature of PPE required. The recommendation in the second report for a pan-Wales PPE reporting and tracking tool led to the introduction of the Stockwatch inventory system.

30. Stockwatch *"contributed to a more effective overview"*, but was not the full answer, and *"didn't provide a full picture simply because it wasn't completed. The information wasn't input into the system at source, either in the hospital or in the joint equipment stores, on a consistent or regular basis"* [Jonathan Irvine/14/135/14-21]. Until November 2020 NWSSP staff were routinely chasing staff in the JES for information and inputting the data into the system themselves; from November 2020 the system changed to one of direct user input, in which there was a formal requirement that data be inputted locally [Jonathan Irvine/14/151-152]]

31. More recently a system known as Scan for Safety has been introduced in collaboration between NWSSP and WG. This system applies to some of the PPE, and *"takes away the necessity of…manual intervention"* [Jonathan Irvine/14/136/9-10].

Mutual aid and NWSSP's contribution outside Wales

32. Procurement arrangements in Wales did benefit other nations. Under mutual aid arrangements Wales provided more than it received. NWSSP was able to enter into a contract with Anhui JBH Medical Apparatus Co Ltd (Anhui) on behalf of the UK as a whole for I&S miilion Type IIR face masks at a total value of £23.4m: the quantity of masks ordered enabled a very competitive price to be secured, and a substantial proportion of the masks ordered under that contract were supplied to other nations within the UK under an agreed "Barnett formula" apportionment of the volume. Under a variation to the initial contract a further I&S million masks were supplied for Wales only. No contract award notice was issued in the name of Anhui, because as that company was based in China there was no obligation to do so. A contract award notice was issued in the name of BTBW, a sourcing agent which had come to the attention of NWSSP through its standard triage process. BTBW had facilitated the contract with Anhui, contributed to due diligence and quality control checks and been responsible for insurance and freight forwarding arrangements. The contract award notice

identified the work which BTBW had carried out, and that it was in respect of a contract with Anhui: there was therefore no lack of transparency in respect of these arrangements [Jonathan Irvine/14/137-142].

The Continuum contract and sale to BSO PaLS

33. In April 2020 NWSSP entered into a contract with Continuum (Scotland) Ltd for the supply of Type IIR face masks. NWSSP later resold some of this stock to BSO PaLS in Northern Ireland, but ultimately it was withdrawn from use there. The stock met all technical and regulatory requirements, but the clip used to ensure a good fit over the bridge of the nose was made of plastic: the preference of clinical staff in Northern Ireland was for a metal clip. Karen Bailey on behalf of BSO PaLS confirmed that the masks purchased from Wales *"met all the technical standards"* [15/24/10-11] and were *"technically perfect but just did not meet the user preference"* [15/26/5-6]. After its experience with the order from Wales BSO PaLS included an assessment of user preference before any order was placed.

Diversity of supply

34. NWSSP acknowledges the importance, so far as possible, of ensuring that there is a supply of PPE which takes into account the differing physical characteristics of what is a diverse population of health and social care staff. When sourcing nitrile examination gloves NWSSP specifically sought extra-small sizes to meet the particular needs, associated with their ethnicity, of a group of nursing staff in Wales [Jonathan Irvine/14/147].

35. There has been an understandable focus in this context on FFP3 masks. As a general proposition, in respect of all PPE, NWSSP procured products within a range and specification prescribed by the IPC Cell of the UK government and by WG. There was a *"really very limited latitude in terms of deviating from those prescribed specifications"* [14/147/11-13]. The FFP3 mask is designed to be adjustable, by means of a strap, but staff needing to use it must pass a fit test. The preference in Wales was for a particular type of FFP3 mask manufactured by 3M, in which staff had confidence. The sourcing and distribution during the pandemic of alternative FFP3 masks made by other manufacturers would have been contrary to the expressed preference for the 3M mask, and would have required repeat fit testing to be undertaken.

Conclusion

36. NWSSP, in a close and effective working relationship with WG, generally responded well to the challenges of the pandemic for the procurement of PPE. It was able to take on wider responsibilities at short notice, adapting existing systems to take into account new and more demanding circumstances, and making full use of its in-house expertise in the procurement field. There were significant challenges for NWSSP, particularly in the early stages of the pandemic, when it was asked to take on responsibility for procurement of PPE in social care, which had to this point not adopted a centralised, co-ordinated approach.

37. The relatively simple, centralised system of healthcare procurement in Wales (and in other devolved administrations) proved better able to withstand the demands of the pandemic than the more complex and fragmented system in England. At [6/22/2-9, 11-12] Dame Emily Lawson, speaking about the system in England, said:

"the whole tower structure…was so complex, the towers were outsourced to a consortium that had put the best offer in, and some of those were NHS organisations, some of them weren't. And the financial model of the towers both made the margin that they were supposed to make and deliver the best possible prices was not compelling to me in some places…the commercial model was of concern."

38. In circumstances in which it needed to move quickly, when it became apparent that the UK was not going to be able sufficiently to replenish the PIPP stockpile, it was of undoubted benefit to Wales that it is a small nation, with close and established relationships between NWSSP and WG. Alan Brace spoke as follows [6/194/15 – 195/3] of the benefits of what he called "*small country governance*". While his observations may have been principally directed to relationships within government, it is submitted that they apply generally to the systems in Wales for procuring PPE during the pandemic of which NWSSP was an integral part:

"One of the things that really helped was, rather than adding to groups that were often too many and probably conflicting, the ability to get key people together really quickly, get a really good handle on a problem, and then put in place actions really quickly, and for that to sort of go quickly through structures even up to the Minister to get approval for something was actually quite fundamental and important…"

39. Ultimately decisions on the structures and methods to be adopted to procure PPE in the event of a pandemic will be for the UK government and for the governments of the

devolved administrations. But NWSSP considers that there is force in what was said by Jeane Freeman, on behalf of the Scottish Government [13/24/24–25/8], that a single procurement route for the whole of the UK would have implications for the democratic accountability of the devolved administrations, as well as dispensing with the benefits of a smaller scale and more agile approach, as described above.

40. It appears from the passage quoted at para 8 above that WG has confidence in the ability of NWSSP to fulfil an extended role, including procurement of PPE for the social care sector, in any future pandemic. WG and NWSSP are actively working on forward planning for such an eventuality.

JONATHAN HOLL-ALLEN KC

Serjeants' Inn Chambers
85 Fleet Street
London EC4Y 1AE

6 May 2025